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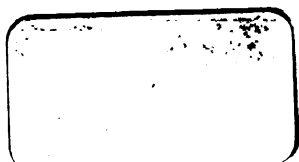
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A
PRACTICAL TREATISE
ON
S H E R I F F L A W ;

CONTAINING
The New Writs
UNDER THE
NEW IMPRISONMENT FOR DEBT BILL:

ALSO,
INTERPLEADER ACT, REFORM ACT, CORONER'S ACT, &c.

WITH
RETURNS, BILLS OF SALE, BONDS OF INDEMNITY,
&c. &c. &c.

—◆—
BY
GEORGE ATKINSON, ESQ.
OF THE INNER TEMPLE, SPECIAL PLEADER.

—◆—
“ Quæritur, ut crescunt tot magna volumina legis ?
In promptu causa est, crescit in orbe dolus.”
Twyne's Ca. 3 Rep. 80.

LONDON :
WILLIAM CROFTS,
19, CHANCERY LANE.

1839.



LONDON :

C. ROWORTH AND SONS, PRINTERS, BELL YARD,
TEMPLE BAR.

TO
SIR GEORGE MUSGRAVE, BART.

EDENHALL, CUMBERLAND,

This Work

IS INSCRIBED

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The Practice

OF

THE OFFICE OF SHERIFF.

CHAPTER I.

SECTION I.

GENERAL OBSERVATIONS.

ENGLAND and Wales, for the better government of them, and the more easy administration of justice, are divided into counties, respectively governed by an Officer, whom we call a Sheriff; an officer of great trust and authority having from her Majesty the Queen the custody, keeping, command, and government (in some sort) of the whole county committed to his charge during her will and pleasure.

Upon his name (*a*), whence derived, much antiquarian learning has been expended, and no few shrewd conjectures hazarded, but they are at best but conjectures; preferring, as we do, practical benefit to speculative exactness, we profess not herein to know more thereon than what may let us into a more clear and distinct understanding of what otherwise might not be so, and leave the rest to a Camden or a Coke, to a Dalton or a Blackstone, with whose ingenuity and wit, to use the quaint language of my said Lord Coke, "the courteous reader may disport himself with for awhile;"—

"Conveniunt rebus nomina sæpe suis."

Before concluding our labours we shall have to dwell more particularly on his powers and duties as a *Judge*, as a *Minister* of the Courts of Law and Equity, as the *Queen's bailiff*, and as a *Conservator pacis* (the division into which they fall); but it may be well to put down here in limine a few legal axioms and

(*a*) Camd. 158; Co. 4, 33; *Milton's case*, Co. 9; Preface Co. Litt. 168; Dalton, 1; 1 Roll. Rep. 364; see also Baron Tomlinson's speech to the Sheriffs of London and Middle-

sex, in Morgan's *Phoenix Britannicus*, printed in 1659: see also Mr. Amos's Notes to Fort. de Laud. Leg. Angliæ, p. 81; Crabb's Hist. of the English Law, pp. 23, 45; Wood's Inst. 3, 71.

definitions "as things necessary to be continually had in remembrance."

County or
shire, defini-
tion of.

A *County* or *Shire* (*b*) is one of those several divisions into which the realm is divided for the better government of it and the more easy administration of justice; or, to use the language of Fuller, "that they may have no reason to complain, with the Grecian widows, that they are neglected in the daily ministration (*c*). Of this division of the realm into counties the Courts take *official notice* (*d*), but the local situation of any place in any county the Courts do not officially notice.

There is no part of the kingdom that lieth not in some county (*e*).

Quillets.

There are certain districts and places parcel of some one county, but wholly situate within and surrounded by some other county; these districts or places are called *Quillets* (*f*), and were within memory productive of inconvenience and delay in the service and execution of the process of the Superior Courts, because of their locality; but this is now remedied by the 20th section of the Uniformity of Process Act, (2 Will. 4, c. 39,) which enacts "that every such district and place shall and may, for the purpose of the service and execution of every writ and process, whether mesne or judicial, issued out of either of the

(*b*) Fort. c. 24; Co. Litt. 125 a, b; 1 Ch. Pl. 267, "*Venue*," 6th edit.

(*c*) "I have heard some critics making this distinction betwixt, that such are *shires* which take their denomination from some principal town, as Cambridgeshire, Oxfordshire, &c., whilst the rest not wearing the name of any town are to be reputed *counties*, as Norfolk, Suffolk, &c.; but we need not go into Wales to confute their curiosity, where we meet Merionethshire and Glamorganshire, but no towns so termed; nay, Devonshire doth discompose this their English conceit."—Fuller, c. xviii. *Ibid.* p. 2.

(*d*) *Deybel's case*, 4 B. & Ald. 243; Stephens on Pl. p. 349, n.; 1 Salk. Rep. 266.

(*e*) Fort. de Laud. c. xxiv.; Jenk. Rep. Ca. 7.

(*f*) The reason whereof I conceive to be, for that the same "*Quillets*" were parcel of the possession of some nobleman, bishop, or abbey, who had some great seignory in that county whereof the same *Quillet* is accounted

parcel; as for example, the counties of Devon and Cornwall are divided with the river of Tamir, but yet a certain "*Quillet*" lying on the hither side of the river is parcel of the earldom's land, and therefore it is a member of the county of Cornwall; so also a certain parcel of land within the county of Berks, called Twyford, is parcel of the county of Wilts, which is at the least 20 miles distant from the same; the reason whereof also is in respect that it was parcel of the inheritance of the Abbey of Ambresbury, the site and chiefest possessions whereof are in the county of Wilts; Hearne's Coll. p. 50. *Castle of Chester*, which is within the ambit of the city, but is a part of the county of Chester, and is the gaol for that county, *Rex v. Antrobus*, 2 Ad. & Ellis, 807; 5 & 6 Will. 4, c. 1, s. 1. *Newgate*, which is the prison as well for the county of Middlesex as for London, within which it stands; Wood's Inst. 76.

said Courts, be deemed and taken to be part, as well of the county wherein such district or place is so situate as aforesaid, as of the county whereof the same is parcel; and every such writ and process may be *directed accordingly and executed in either of such counties.*"

A Sheriff in former times (*g*) had often more counties than one under his charge, in the same manner as the Sheriff of Cambridge is at the present day also Sheriff of Huntingdon (*h*).

There are at this day in England 40 counties (*i*); in Wales 12; in all 52; namely—

IN ENGLAND.

Bedford	Hertford	Salop (or Shropshire)
Berks	Huntingdon	
Bucks	Kent	Somerset
Cambridge	Lancaster	Stafford
Chester	Leicester	Suffolk
Cornwall	Lincoln	Surrey
Cumberland	Middlesex	Sussex
Derby	Monmouth	Southampton (or Hampshire)
Devon	Norfolk	Warwick
Dorset	Northampton	Westmoreland
Durham	Northumberland	Worcester
Essex	Nottingham	Wilts
Gloucester	Oxford	York.
Hereford	Rutland	

IN WALES (*j*).*North Wales.*

Anglesea
Caernarvon
Denbigh
Flint
Merioneth
Montgomery

South Wales.

Brecknock
Cardigan
Caermarthen
Glamorgan
Pembroke
Radnor.

(*g*) Hertfordshire and Essex, 1 Camd. Brit. 344; and until the 13 Eliz. one person was Sheriff of Somerset and Dorsetshire; Sussex and Surrey; Oxford and Berks; Nottingham and Leicestershire; *Wilkes' case*, 4 Burr. 2560; 8 Eliz. c. 16.

(*h*) Fort de Laud. c. xxiv.; Mad. Excheq. p. 635.

(*i*) There *were* others, as Winchel-

combe-shire, united to Gloucestershire, Howdon-shire annexed to Yorkshire, and Hexham-shire to Northumberland, and small tracts of ground, the county of Poole, and the like, which have long since lost their names and bounds, being but the extended limits and liberties of some incorporation.—*Fuller's Worthies*, c. xviii.

(*j*) Monmouth, till the 27 Hen. 8,

Of these counties or shires there are five of special mark; namely, Durham, Chester (*k*), Lancaster, Middlesex and Westmoreland. The three first being *Counties Palatine* (*l*), the two last in *fee*.

Counties
Palatine.

Durham and Chester are counties palatine by *Prescription* (*m*), Lancaster is such by *Act of Parliament* (*n*). The Earldom of Chester (Camden states) became vested in the Crown in the time of Hen. 3, and has ever since given title to the king's eldest son. The county palatine of Lancaster, on the attainer of Hen. 6, (1 Edw. 4,) became forfeited, and was then, by act of parliament (*o*), vested in King Edward 4 and his heirs, *kings of England*, for ever, but under a separate guiding and governance from the other inheritances of the crown. The county of Durham, the only one remaining in the hands of a subject, was, by a recent statute (*p*), intituled "*An Act for separating the Palatine jurisdiction of the County Palatine of Durham from the Bishoprick of Durham*," vested in his late Majesty, his heirs and successors, as a franchise and royalty separate from the Crown.

The Queen may make what counties she pleases counties palatine (*q*).

The Sheriff of a County Palatine is as much the officer of the Court as any other Sheriff, although it is *irregular* to direct the writ to him in the first instance (*r*); but if directed to him immediately he is not a trespasser for executing it.

Counties in
fee.

Middlesex, by a charter of Hen. 1, (confirmed by King

c. 26, was part of Wales; see Jenkin's Rep. case 7.

(*k*) See 11 G. 4, and 1 Will. 4, c. 70, s. 13, abolishing the jurisdiction of the Chamberlain, &c.; and since this the writ is directed immediately to the Sheriff of the county.

(*l*) Counties Palatine are so called, à palatio, because the owners thereof, the Earl of Chester, the Bishop of Durham, and the Duke of Lancaster, had in those counties *regalem potestatem in omnibus*, Bracton, lib. iii. c. 8, s. 4. As to their privileges, and why originally executed, see 4 Inst. 204; 5 Crompt. Juris. 137; 1 Danv. Abr. 750. Pembrokeshire and Hexhamshire were Counties Palatine; the former was abolished by the 27 Hen. 3, the latter in 14 Eliz. By the 13 & 14 Car. 2, c. 21, s. 11, the counties

of Wales are called *Palatine*; the Isle of Ely is only a *Royal Franchise*, and not a County Palatine; 2 Inst. 220; *Grant v. Bagge*, 3 East, 128.

(*m*) Co. Litt. sect. 170.

(*n*) Seld. tit. Hon. 2, 5, 8; 4 Inst. 204; Plowd. 215; T. Raym. 138.

(*o*) 1 Vent. Rep. 155, 157; 4 Inst. 245; see also 1 Hen. 7.

(*p*) 6 & 7 Will. 4, c. 19; see the extent of the words "*County of Durham*," in this act, sect. 7.

(*q*) Vaugh. Rep. 418; 4 Inst. 201.

(*r*) *Needham v. Bennet*, Sir T. Raym. 171; *Jackson v. Hunter*, 6 Term Rep. 71; 2 Saund. Rep. 193; 1 Ch. Rep. 374. As to *Chester*, see *suprà*, note (*k*); *Lancaster and Durham*, see 1 & 2 Vict. c. 110, s. 3; also *post*, Direction of *Capias*.

John,) was vested *in fee* in the mayor and commonalty and citizens of the city of London, upon condition of their paying 300*l.* a year to the King's exchequer; but by an act of Common Council(s), dated 7th April, 1748, it is enacted, amongst other things, "That henceforth the *right of electing* persons to the said offices of Sherifffalty shall be, and the same is hereby *vested in the liverymen of the several companies* of this city," &c. (t)

In Middlesex the two officers constitute only one Sheriff, and must in all writs and pleadings be described as *Sheriff*; in London they may be described as *Sheriffs* (u), (x).

Westmoreland is the *inheritance* of the Earl of Thanet.

The Sheriffs of Middlesex and Westmoreland are as much the officers of the Court as other Sheriffs, differing only in their appointment, mode of accounting, and a few other matters which may without prejudice be at present omitted.

There are also *Counties Corporate* (y)—that is, certain cities Counties corporate. of ancient boroughs, to which formerly, out of special grace and favour, the kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county; and are governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein—12 cities and 5 towns; namely(z):

Counties of Cities with two Sheriffs.

Bristol	Exeter	London (b)
Canterbury	Gloucester	Norwich
Chester (a)	Litchfield	Worcester
Coventry	Lincoln	York (c).

(s) See this "Act of the Common Council," set out verbatim in Impey's Sheriff, p. 15—25.

(t) Viner's Abr. Sheriff, C. a.; see also Bohun, Norton, Green or Jacob, on the Privileges of London.

(u) Bac. Abr. Sheriff, K. 162; 2 *Ld. Raym.* 1135; *Barker v. Weedon*, 1 C. M. & R. 396; 2 Ch. Pl. 291, 6th edit.

(x) In the county of Londonderry, in Ireland, the office is executed by two; 1 *Roe on Elect.* 498.

(y) Co. Litt. 109.

(z) See 3 Geo. 1, c. 15.

(a) 42 Eliz.

(b) Hen. 1, 2 Inst. 230; 2 Inst. 248

(c) 32 Hen. 8. By the Municipal Corporation Act, (5 & 6 Will. 4, c. 76, s. 141,) the Queen is empowered to grant Charters of Incorporation. Note, the Sheriff of the city of Oxford, appointed in pursuance of the above act, has not the execution in Oxford of writs from the Superior Courts; they are executed by the Sheriff of the county; *Granger v. Taunton*, 5 Dowl. 190.

Counties of Towns with one Sheriff.

Kingston upon Hull

Nottingham

Newcastle upon Tyne

Pool and Southampton.

Two Sheriffs.

The peculiarity of these Counties Corporate is, that there are in some that is counties of cities two Sheriffs, constituting in law but *one* officer (*d*). In Viner's Abridgment, Sheriff, C. a. it is accounted for thus (with reference more immediately to London and Middlesex):—"The first beginning of *this custom* seems to be upon the foundation of the Charter of King John, who granted the sheriffwick of London and Middlesex to the mayor and citizens of London, at the farm of 300*l.* per annum, so that being a grant in fee of the sheriffwick as a corporation, they had a right to name one or more officers in order to execute the same; and they thought it proper to name *two* officers, indifferently to execute both offices, and both of them to execute as one sheriff, though the writ in Middlesex is directed to them as *one*, viz.: Vic. Com. Middx. *Præcipimus tibi*; in that of London, Vic. London *Præcipimus vobis*. And the reason of this difference seems to be, that before this grant of the sheriffwick to the corporation, the corporation nominated to the Crown, and the Crown appointed the Sheriffs for London, and the London Sheriffs were responsible to the King for the London profits of the sheriffwick, and that was the reason why two were appointed, that both might be responsible; and this nomination was, that the citizens might exhibit to the King responsible persons: *and that seems to be the reason that in many of the corporations that are cities and counties there are two sheriffs*. But when by the Charter of King John the sheriffwick of London and Middlesex was granted to the citizens as a perpetual Fee Farm, then they entered their Sheriffs, which before were nominated for London only, and the election of the two was for both sheriffwicks, but the directing of the King's Writs were as before, viz. in London, To the two Sheriffs; in Mid-

(*d*) Auditor Curle's case, 11 Co. 7, and cases cited; *Rich v. Player*, Show. Rep. Ca. 276; Wood's Inst. 71; 2 P. Wms. 108; Bac. Abr. Sheriff, K.; 4 Mod. 65; Vin. Abr. Sheriff, C. a. pl. 1; *Weobly's case*, 3 Rep. 72, a. In case of the death or challenge of one of these two Sheriffs, see

Rex v. Warrington, 4 Mod. 65; 1 Salk. 152; S. C. Year Book, 22 Hen. 6, 51, b, pl. 17; *Rich v. Player*, Skin. 102; 2 Show. 262, 286; Vin. Abr. tit. Sheriff, C. a.; also where there are two who suffer an escape, and one dies, Cro. Eliz. 625; 2 Ch. Pl. 267, n.

dlesex, as if there was one only. G. Hist. of C. B. 136; 3 Co. 72; 1 Show. 289, 162; 2 Show. 262, 286; Lev. 284; Priv. of London, fol. 5, 6, 7, 272, 273; Hob. 70."

The Sheriffs of Counties Corporate are as much the officers of the Court as other Sheriffs.

There are also *Cinque Ports*—certain Ports wherein the Constable of Dover Castle, as Warden, executes all writs, &c.; their names are—

Dover	Hastings
Sandwich	Hythe
Romney	Winchelsea and Rye (d).

Cinque
Ports.

In *Berwick-upon-Tweed* the Mayor and Bailiffs have execution of all process (e). Berwick on
Tweed.

A *Franchise or Liberty* is a royal privilege, or branch of the Queen's prerogative, subsisting in the hand of a subject, wherein the grantee only and his officers are to execute all process (f). Note, when the Queen is a party no franchise is allowed (g); also by the sanction of the Superior Courts, (which is given by issuing a writ with a *non omittas clause*,) the Sheriff hath power to enter all liberties within his county. All liberties are officially noticed by the Courts (h); the High Sheriff is likewise bound to notice them (i).

Franchise
or Liberty,
definition of.

A *Bailiwick* is now, in general, used to signify the whole county, as in the return of a writ where the person is not arrested, the Sheriff says, "the within-named A. B. is not found in my *Bailiwick*"; and in the statute of Magna Charta, c. 28,

Bailiwick.

(d) In the time of Edward the Confessor there were but three ports, Dover, Sandwich, and Romney; but in the time of William the Conqueror, Hastings and Hythe were added; 4 Inst. 222; 2 Inst. 556; and in 1 John, Winchelsea and Rye. The Duke of Wellington is the present Warden.

(e) See 3 Bing. 461; 11 Moore, 372, S. C.

(f) See *Newland v. Cliffe*, 3 Barn.

& Ad. 633, post, "*Bailiffs of Liberties*;" *Platel v. Douse*, 1 Arnold, 38; Finch, C. 164; Wood's Inst. 206; *Boothman v. Surrey*, 2 Term Rep. 5; *Balme v. Hutton*, 2 C. & J. 19.

(g) Fitz. Prerog. 21, Enquest, 12.

(h) 2 Term Rep. 5, *suprà*; *Carratt v. Smallpage*, 9 East, 338; *Newland v. Cliffe*, 3 B. & Ad. 633.

(i) *Ibid*.

and 14 Edw. 3, c. 9, the word "Bailiffs" seems to comprise as well Sheriffs as Bailiffs of hundreds (*j*).

The relation in which he stands to the Courts and to the world.

The Sheriff is the immediate officer to *all* the Courts at Westminster to execute writs, and whom the law presumes to be indifferent between party and party (*k*).

The law likewise intends him to be a lay person, and to have no skill in the science of the law, and whether a writ comes to him by authority or without authority (*l*), or is awarded against whom (*m*) it lieth not, he cannot doubt or dispute its validity *quia parere necesse est*.

The extent of his jurisdiction.

"The power of a Sheriff does not extend beyond his county, but by special authority from the Queen, as by an Habeas Corpus, he is in other counties sheriff to a special intent, and the law adjudges the removal of the prisoner of the same Sheriff in every county; and by this means it is said there may be two Sheriffs in one county, namely, *one to a special intent*, and the *other to all general intents and purposes*" (*n*). This rule, so laid down in Plowden, is true as to the Sheriff's *judicial*, but as to his *ministerial* acts not so, for the latter may in general be executed *dehors* his county; for example, he may make his return *anywhere in England* (*o*), for what is true or false is universally so. So the assignment of a bail-bond or a panel may be made anywhere in England, but not out of England, for he is an officer only in England (*p*). So if the Sheriff of N. have a man in custody in N., and the Sheriff is in another county, and a writ is delivered to him against that person, he is in custody immediately upon that writ (*q*). So if a prisoner of his own wrong shall make an escape and fly into another county, the

(*j*) Co. Litt. 168, b; 2 Inst. 18.
(*k*) Dalt. 311; Plowd. 73, a; *Lloyd v. Wood*, 5 Adol. & El. 232.

(*l*) As to fees on such writ, see *Earle v. Plummer*, 1 Salk. 332.

(*m*) Dyer, 69, b; *Countess of Rutland's case*, 6 Rep. 54, a; *Tarlton v. Fisher*, 2 Dougl. 671; *Cameron v. Lightfoot*, 2 W. Bl. 1190; *Crossley v. Shaw*, 2 W. Bl. 1085; *Jackson v. Hunter*, 6 Term Rep. 73; *Lloyd v. Wood*, 5 Adol. & Ellis, 232. This

last case will hereafter be more fully considered; but see the danger of arresting ambassadors, &c. *post*, "Privileged Persons."

(*n*) Plowd. 37 a.

(*o*) 1 Wils. 336; *Frost's case*, 5 Co. 89 a; Dalt. 23; 2 Will. 4, c. 39, s. 1, giving power to arrest to within 200 yards of his own county.

(*p*) 9 Hen. 4, c. 1; Dalt. 22.

(*q*) *Jackson v. Humphreys*, 1 Salk. 273.

Sheriff or his officers, upon fresh pursuit, may take him again in another county (r).

The office of Sheriff cannot be apportioned, divided or abridged (s); and, therefore, although the Queen may determine this his office at her pleasure (being appointed "durante bene placito" (t)), yet she cannot determine it in part as for one town or one hundred, or any other part; neither can she abridge the Sheriff of any thing incident or belonging to his office, for the office is entire, and so it must continue in that entirety for the whole county, without any fraction or diminution (except by act of parliament, or that she make some town, &c. a county of itself, and appoint a Sheriff thereto;) neither can the office be determined, nor any part thereof, without and until a new Sheriff be made for the execution and administration of justice, except it be by his own death, for on the demise of the Crown "he may hold his office six months, unless sooner displaced by the successor" (u); nor does it determine by becoming a peer on his father's death, though the dignity descends in time of parliament, so that he ought to attend parliament as a peer (x).

The office cannot be apportioned, divided, or abridged.

The office may descend to and be executed by a female; for Anne Countess of Pembroke, Dorset, and Montgomery, had the office of Hereditary Sheriff of Westmoreland, and at the assizes at Appleby she sat with the judges on the bench (y).

Executed by a female.

The Courts take judicial notice of the ministerial officer of all counties (z).

Judicially noticed.

(r) Plowd. 37; Dalt. 23.

(s) *Milton's case*, 4 Co. 33; Wood's

Inst. 71.

(t) See "Warrant of Appointment;" 3 & 4 Will. 4, c. 99; 6 & 7 Will. 4, c. 105, s. 4.

(u) 1 Ann. st. 1, c. 8.

(x) Cro. Eliz. 12, pl. 3; 25 Eliz. C. B., *Mordant's case*.

(y) Hargrave's Notes, Co. Litt. 326 a.

(z) 8 Mod. Ca. 252; 1 Salk. Rep. 266.

SECTION II.

QUALIFICATION.

*Landed
qualifica-
tion.*

THE Statute de Vicecomitibus (a) declares "that none shall be Sheriff except he have *sufficient* (b) *land within the same shire* where he shall be Sheriff, to answer the king and the people;" but this landed qualification as to quantity is wholly undefined, either by statute or common law; yet as there are many onerous duties cast upon him, for which the law has not provided distinctly any remuneration, men of substance are for the most part appointed to the office, that they may be able to bear those duties with more ease and dignity (c). Again, by the principles of the common law, *no salary* is incident to the office, and this is another reason for appointing men of substance to the office; but by statute law salaries have formerly been granted, and still are in the statute book in some counties, as in Wales (d), where every Sheriff within the twelve shires hath for his fee yearly 5*l.*, the Sheriff of Cambridgeshire (e), and the two knights of the shire (incorporated by the name of the Wardens of the Wages), have 10*l.* rent, payable out of the shire manor; namely, lands assured to Serjeant Hinde and his heirs, within the manor of Maddingly, in the same county: so in counties corporate and towns, by virtue of some bye-law, an allowance is made to the Sheriffs, as in London (f), from 400*l.* to 500*l.* a year, to each of them: so in Scotland, the Sheriffs Depute have salaries, as in the case of Sir Walter Scott, who, as Sheriff Depute of Selkirkshire, had an annual salary of 300*l.* a year, which he held from the 16th day of December, 1799, until his death, in 1832 (g).

(a) 9 Edw. 2, c. 16, st. 2; 4 Edw. 3, c. 9; 5 Edw. 3, c. 4; see also 28 Edw. 1, c. 13, s. 8.

(b) The construction of the term "*sufficient*" rests with the Great Officers of State and Judges, who have, on all occasions that I have witnessed the ceremony, allowed the plea of "no sufficient land within the county," as an excuse of course.

(c) *Graham v. Grill*, 2 M. & S. 297.

(d) 34 Hen. 8, c. 26.

(e) 34 Hen. 8, c. 24.

(f) See the Report of the Municipal Corporation Commissioners, relative to the corporation of the city of London, tit. "*Corporate Officers*."

(g) Lockhart's Life of Scott, vol. i. p. 318; 2 & 3 Will. 4, c. 101.

It was once laid down by Lord Holt (*h*), "that the Queen hath an interest in every subject, and a right to his service, and no man can be exempt from the office of Sheriff but by act of parliament or letters-patent." Four years only before this case (in 1690 (*i*)), a different doctrine of law prevailed, at least its truth as an universal proposition was denied, and in 1767 (*k*), by one of the ablest and most eloquent judgments on record, delivered in the House of Peers, by Lord Mansfield, it was at length set at rest, "that a Dissenter was not compellable to qualify himself by taking the Sacrament according to the rites of the Church of England, and that a Dissenter's election to the office was null and void."

Larwood's case.

Now, however, as the *disabling statutes* (*l*), upon which all this disputation arose, are repealed as to the sacramental test, and as regards her Majesty's Roman Catholic subjects, an oath in unison with their religious creed (*m*) has been substituted instead of the oaths of allegiance, supremacy, and abjuration, the law may be briefly stated thus: *no man is exempt from the office of Sheriff* (*n*) *but by act of parliament; letters-patent; by disability arising from a judgment in law* (*o*); *or by reason of the office being incompatible with another* (*p*).

Test and Corporation Acts.

1. *The persons disabled by act of parliament from holding the office, are the following:*

Firstly. No militia officer, during the time he is *acting* in that capacity, shall be obliged to serve the office (*q*).

Militia Officers.

Secondly. No one who hath already served the office of Sheriff of any county, shall be, within three years next ensuing, chosen again, if there be other in the said county of sufficient possessions and goods (*r*) to answer to the Queen and the people.

(*h*) *Larwood's case*, 1 Ld. Raym. 32; 1 Salk. 167; S. C. 4 Mod. 274, n. See also *Pelham's case*, Savil, 43; *Salop's case*, 9 Co. 46 b; Mo. 111.

(*i*) *Mayor of Guildford v. Clark*, 2 Vent. 247.

(*k*) *Harrison v. Evans*, Cowp. 393. See also Lord Mansfield's judgment, reported in 2 Burr's Eccl. Law, 220, 8th edit.; Bro. P. C. 10.

(*l*) 13 Car. 2, st. 2, c. 1; 25 Car. 2, c. 2; 16 Geo. 2, c. 30, repealed as to so much as imposed the necessity of taking the sacrament, by 9 Geo. 4, c. 17, and 5 & 6 Will. 4, c. 28. The

acts relating to declarations against transubstantiation are repealed by 10 Geo. 4, c. 7.

(*m*) 10 Geo. 4, c. 7.

(*n*) *Larwood's case*, *suprà*.

(*o*) 2 Mod. 305; 4 Mod. 273.

(*p*) *Mayor of Norwich v. Berry*, 4 Burr. 2114, and cases there cited.

(*q*) 2 Geo. 3, c. 20.

(*r*) 1 Rich. 2, c. 11; the words of this statute are remarkable, as by the "*Statute de Vicecomitibus*" landed property is the only qualification; *ante*, p. 10.

Former Sheriff. “The Under-sheriff, and all other officers within the city of London, which now be or shall be at all times, excepted; and such counties only except in which divers of the King’s liege people be inheritable to the office of Sheriffs at this day, and also such persons as have estate of freehold in the office of Sheriffs at this day, and except the letters-patent made to them of the office of Sheriffs, and their Under-sheriffs and clerks” (*s*).

Bailiff to a lord. Thirdly. “None that is steward or bailiff to a great lord shall be made Sheriff, except he be out of office, but that he be such as can entirely attend to execute the office of Sheriff for the King and the people” (*t*).

Magistrate. Fourthly. Although a Sheriff is virtute officii a conservator of the peace, yet it is declared (*u*), “that all and every acts to be done by any Sheriff, by authority of any commission of the peace, during the time of his Sheriffwick, shall be void. But when he is out of office, he may act by force of the same commission (*v*).

2. *By letters patent*; no instance of this has occurred to us in practice or in research.

A prisoner for debt or excommunicated. 3. *By a disability arising from a judgment in law* (*x*): a prisoner for debt is not bound to remove his disability (*y*), but (for reasons not very intelligible on the face of the reports, or otherwise) a person excommunicated (*z*) is bound to remove his disability.

Attorney. 4. *By reason of the office being incompatible with another* (*a*). An attorney in actual practice is exempt on this ground, for he cannot necessarily be attendant on the Superior Courts and his County at the same time. The great Lord Mansfield, in the authority referred to, considered this exemption as the privilege of the Court of which he is an officer, and not the privilege of the attorney himself; being so, with the greatest

(*s*) 23 Hen. 6, c. 7. No person who has once served the office in London and Middlesex is again eligible; *Act of Common Council*, 7th April, 1748. A person who has paid the fine (unless he afterwards become an Alderman,) is also for ever exempt—*Ibid*.

(*t*) 9 Edw. 2, c. 16, st. 2.

(*u*) 1 Mar. stat. 2, c. 8, s. 2.

(*v*) Dalt. 27.

(*x*) Salk. 108; 4 Mod. 273.

(*y*) 2 Mod. 306.

(*z*) 2 Mod. 99.

(*a*) *Mayor of Norwich v. Berry*, 4 Burr. Rep. 2114.

deference it is submitted, that the exemption must apply with equal force to Sheriffs of counties as to Sheriffs of cities or towns.

In the same case (*b*) it was also said, "I know that *barristers* are considered as exempt from serving that office." The fact of a barrister's being in *actual* practice may possibly be allowed as a good excuse with the Judges and other great Officers of State, on the Morrow of St. Martin, but as to its being claimable as a matter of right, either as the privilege of the Court or as a personal privilege (by statute or common law), seems to be a position not easily maintainable. Barristers.

The office is incompatible with the duties of a Knight of the Shire (*c*), *whenever he is the returning officer*; but there is no objection to a Sheriff's election for a county, city, or borough, where he is not the returning officer, the statute of 3 Geo. 1, c. 15, s. 18, virtually taking away the obligation of residence previously required by 4 Hen. 4, c. 5, and the oath of office (*d*). Members of Parliament.

To the converse of this, that is, when the election to parliament is prior to the appointment to the Sheriffalty, there seems no objection; but by a Resolution of the House of Commons, 7th Jan. 1689, "the nominating any member of the House to the King to be made a Sheriff, is a breach of the privilege of the House" (*e*).

SECTION III.

NOMINATION OF ENGLISH SHERIFFS (*a*).

THE NOMINATION LIST is made up of names returned by the Sheriff of the respective Counties to one of the Judges on Cir-

(*b*) 4 Burr. 2114.

(*c*) 4 Inst. 48; Litt. Rep. 326; Sim. Elect. p. 42. See also the "*Nolumus Clause*," in the Writ of Election, *post*, which once extended to *Lawyers*.

(*d*) 4 Dougl. 87, 125; 1 Roe on Elect. 160, n.; 10 Journ. 324—335.

(*e*) 1 Roe on Elect. 161.

(*a*) The Lord Mayor of London

may nominate to the Court of Aldermen at any time he thinks proper, between the 14th of April and the 14th of June in every year, one or more fit persons, (not exceeding nine,) being free of the city, to be publicly put in nomination; also any two or more liverymen, at the day of election, may nominate any freeman of the city.—*Act of Common Council*, 1748.

cuit. The Return should be of all who ought to serve the office, and delivered to one of the Judges in like manner as other returns. Objections (if any) are sent to him in like manner, which, as will be seen hereafter, are stated by him on the day of nomination, and allowed or rejected, as the case may be.

English
Sheriffs.

The Morrow of *All Souls* was formerly the day of assembling at the Exchequer for ordaining Sheriffs, but in consequence of the abbreviation of Michaelmas Term, by the statute of 24 Geo. 2, c. 48, s. 12, the Morrow of *St. Martin* was appointed thereby.

By the Statute of Sheriffs (9 Edw. 2, st. 2,) it was enacted, "*that the Sheriffs should from thenceforth be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and by the Justices; and in the absence of the Chancellor, by the Treasurer, Barons, and Justices.*"

By the statutes of 14 Edw. 3, c. 7, 23 Hen. 6, c. 8, 21 Hen. 8, c. 20, the Chancellor, Treasurer, President of the King's Council, Chief Justices, and Chief Baron, are to assign them.

The Statute of Cambridge (12 Rich. 2, c. 2,) ordains, that the Chancellor, &c. shall be *sworn* "to act indifferently, and to name no man that sueth to be put in office, but such only as they shall judge to be the best and most sufficient."

On the Morrow of St. Martin the ceremony of nomination takes place in the Court of Exchequer, at Westminster—an interesting ceremony. It is, perhaps, a matter more of curiosity than of practical importance, but the testimony of an eye-witness, on more occasions than one, may be deemed, we trust, not wholly without value, or here out of place.

On that day the Lord Chancellor, the Chancellor of the Exchequer, the Judges of each Court, and the President of the Council^(b), assemble in the Court of Exchequer. The great Officers of State arranging themselves on the Bench on the right and left of the Lord Chief Baron, the other Judges on the floor of the Court; the Officer of the Court next administers an Oath to them in French, that they will nominate no one from favour, partiality, or any improper motive; the same Officer then, having the list of the Counties in alpha-

(b) See 1 Bl. Comm. 340, edit. Mr. Christian, note.

betical order(c), and the names of those who were nominated the year preceding, reads over the *three* (d) names, and the last of the three he pronounces to be the *present Sheriff*; if any of the Officers of State or Judges have any objection on the part of any one, it is then made, and, if allowed, another name is substituted; if there be no objection, one rises and says, "To the two gentlemen I know no objection, and I propose A. B., Esq., in the room of the present Sheriff." Another officer has the paper which the Clerk of the Assizes for each County transmitted to him, also another with the names on the former list; and whilst the three are nominated he prefixes 1, 2, 3, to their names, according to the order in which they are placed.

The nomination list being approved of in the Court of Exchequer, it is then reported (by the Clerk of the Privy Council, who is in attendance,) to her Majesty in Council.

The nomination of the Sheriffs for Wales is now vested in the *Judges and Barons of her Majesty's Courts of Queen's Bench, Common Pleas, and Exchequer*, and in them exclusively. There are three statutes on this head, the 34 & 35 Hen. 8, c. 26, which established the Court, styled, "The Court before the President and Council of the Marshes of Wales," and which vested the yearly nomination of Sheriffs in the *Lord President, Council, and Justices of Wales*; afterwards the 1 W. & M. c. 27, abolished the Court, &c. and vested the nomination in the *Justices of the Great Sessions*; lastly, the 1 Will. 4, c. 70, ss. 13 and 31, enacts, "that all the power, &c. of the Justices and Courts of Great Sessions, both in Law and in Equity, in the Principality of Wales, shall cease and determine at the commencement of the Act, and that the jurisdiction of the several *Judges and Barons of his Majesty's Courts of King's Bench, Common Pleas, and Exchequer*, respectively, shall be extended and exercised over and within the several Counties in Wales in like manner, to the same extent, and to and for all intents and purposes whatsoever, as

Welsh Sheriffs.

(c) Except Middlesex and Westmoreland, they being in fee; but Durham (although formerly appointed by the Bishop, during his pleasure, a right claimed by prescription; Tidd's Pr. 313, 8th edit.) is now on the list; by the statute of 6 & 7 Will. 4, c. 19, the power of appointment being vested in her Majesty; see *ante*, 4.

(d) Whence the practice of naming *three* originated does not seem clear, whether from a statute not to be found, according to some, 2 Inst. 559; 1 Bl. Comm. 341; or, according to others, because it is more respectful to present *three* to her Majesty than only *one*; *Ibid*.

the jurisdiction of such Courts respectively is now exercised in and over the Counties of England, not being Counties Palatine;" therefore, as before stated, the right of nomination as to the Welsh Sheriffs is vested in the Judges and Barons of the three Superior Courts of Common Law.

Nomination
on death of
Sheriff.

In the case of death, the Queen, by her prerogative, nominates and appoints the succeeding Sheriff, *necessarily* without the assembly of the Officers of State on the Morrow of St. Martin, but whether the Queen can appoint any one to be Sheriff without this assembly, except as aforesaid, or one not of the three on the nomination list, is a *vexata quæstio*, and has called forth the keenest disputation, neither side wanting its advocates to support its view of the question (*e*). The authority in the time of Queen Elizabeth, which gave rise to this dispute, always appeared to us to differ from an exercise of prerogative in case of the death of the Sheriff in degree only, and not in kind, both equally being cases of necessity; if so, the *same calamity* might, perhaps, justify the self-same exercise of prerogative at this day; but to infer thence that there subsists a *general* power in the crown by virtue of its prerogative, does violence to the plainest rules of logic, and revives the doctrine of *non obstantes*—a doctrine "which sets the prerogative above the laws, was effectually demolished by the Bill of Rights at the Revolution, and abdicated *Westminster Hall* when King *James* abdicated the kingdom (*f*)."

Notwithstanding, however, this demolition of the *dispensing power* by the Bill of Rights, the practice of occasionally naming "*a pocket Sheriff*," (that is, one not of the three on the nomination list approved of in the Exchequer on the Morrow of St. Martin), by the sole authority of the crown, still continues, and in Ireland has been carried to such an extent as to call down upon it the attention of the legislature. *Note*, reader, no case of a *compulsory* appointment is to be found in our books or known to have occurred (*g*).

(*e*) Dyer, 225; Jenk. 229; 1 Bl. Comm. 342, edit. Christian; 2 Inst. 559; but see Dalt. p. 6.

(*f*) 1 Bl. Comm. 341.

(*g*) See *Bill of Rights*, (1 W. & M. c. 2, s. 2,) 2 Inst. 559; 1 Bl. Comm. 341, Mr. Christian's notes. But (to

use the words of Mr. Christian) "it is an ungracious prerogative, and whenever it is exercised, unless the occasion is manifest, the whole administration of justice throughout the county for a twelvemonth, if *not corrupted*, is certainly suspected. The

In the City of *Oxford, Berwick-upon-Tweed, Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, York, Carmarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole and Southampton*, the Council, that is, the Mayor, Aldermen, and Councillors, are on the *ninth day of November* every year, at the quarterly meeting of the Council, and immediately after the election of the Mayor, to appoint a fit person to execute the office of Sheriff^(h).

Nomination
in certain
cities.

The nomination list being thus approved of, and reported to her Majesty in Council, she takes a pin, and (to insure impartiality it is presumed) lets the point of it fall upon one of the three names, and the person upon whose name it *chances* to fall is the Sheriff for the ensuing year; this is termed "*pricking for Sheriffs*:" this done, "the same shall be forthwith notified in the *London Gazette* by the Clerk of the Privy Council" (i).

Pricking for
Sheriffs.

SECTION IV.

APPOINTMENT.

THE appointment of High Sheriffs for the counties in England and Wales is now regulated by a recent statute (3 & 4 Will. 4, c. 99,) which simply substitutes *a warrant*, signed by the Clerk of the Privy Council, instead of a patent under the Great Seal, Writ of Discharge, Patent (a) of Assistance, Recognizance, and numerous other formulæ theretofore in use in that behalf; the warrant is set forth in the schedule of the act, and is in the following words:—

Appoint-
ment.

cause ought to be urgent or inevitable when recourse is had to this prerogative."

(h) See 5 & 6 Will. 4, c. 76, s. 61, amended by 6 & 7 Will. 4, c. 105, s. 5.

(i) 3 & 4 Will. 4, c. 99, s. 3.

(a) It is rendered unnecessary for any Sheriff or Sheriffs of any county, city, or town in England and Wales to sue out patent or pass accounts in Exchequer.

Warrant of
Appointment.

At the Court at —, the — day of —.

Present the Queen's most Excellent Majesty in Council.

To A. B., of &c.

Whereas her Majesty was this day pleased by and with the advice of her Privy Council, to nominate and appoint you for and to be Sheriff of the county of — during her Majesty's pleasure : These are therefore to require you to take the custody and charge of the said county, and duly to perform the duties of Sheriff thereof during her Majesty's pleasure (a); and whereof you are duly to answer according to law.

Dated this day

By her Majesty's command,
C. D.

" And the appointment of Sheriff thereby made shall be as good, valid, and effectual in the law to all intents and purposes whatsoever, as if the same had been made by patent under the great seal of Great Britain, or by any ways and means heretofore in use ; and the Sheriff and Sheriffs so appointed as aforesaid, shall thereupon, and upon taking the Oath of office hereafter mentioned, have and exercise all powers, privileges, and authorities whatsoever, usually exercised and enjoyed by Sheriffs of counties in England and Wales, without any patent, writ of assistance, or other writ whatsoever, or entering into any recognizance by himself or sureties, and without payment of or being liable to pay any fees whatsoever for the same."—s. 3.

Except
Lancaster,
Westmor-
land, and
Middlesex.

By the words of the statute this mode of appointment is applicable to the Sheriff of *any* county in England or Wales, *except the County Palatine of Lancaster*—but the County Palatine of Lancaster cannot be the only exception, for the warrant of appointment must necessarily be confined to counties where the power of appointment is vested in the Crown ; where that power is in a subject, as in the Earl of Thanet, with regard to Westmorland, or in a Corporate Body, as in the City of London with regard to Middlesex, that power must needs remain in full force and effect as before the act ; probably this supposed oversight may be supplied by ss. 37, 38, and 39 of the same statute.

Warrant
transmitted
to the per-
son appoint-
ed, and a
duplicate to
the Clerk of
the Peace.

The warrant must *forthwith*, after the pricking or nomination by her Majesty, (which usually takes place in Hilary term next following,) be transmitted by the Clerk of the Privy Council to

(b) The appointment by this warrant, as by the Royal Writ, is "*du- rante bene placito*," 4 Rep. 32 ; ante, p. 1—8.

the person so nominated and appointed Sheriff; and the same Officer must within *ten days* next after the date of the warrant, transmit a duplicate thereof to the Clerk of the Peace of the county for which such person is appointed Sheriff, to be by the Clerk of the Peace enrolled and kept without fee or reward.

After receiving this warrant of his appointment and *before he enters upon the execution of his office*, every one appointed High Sheriff (except the Sheriffs of London and Middlesex) shall take the *same* oath of office as before the act, which oath must be fairly *written* on parchment, (without being subject to any stamp duty,) and *signed* by him, and may be sworn before any one of the Barons of the Court of Exchequer or any one of her Majesty's Justices of the Peace for the county of which he shall be appointed High Sheriff, and the same must thereupon be *filed* in the office of the Clerk of the Peace, to whom a fee of five shillings is due for the same, and no more.

Oath of Office before whom taken, &c.

Oath of Office.

I, *A. B.* do swear, that I will well and truly serve the Queen's Majesty in the office of Sheriff of the county of _____, and promote her Majesty's profit in all things that belong to my office as far as I legally can or may: I will truly preserve the Queen's rights, and all that belongeth to the Crown; I will not assent to decrease, lessen, or conceal the Queen's rights, or the rights of her franchises; and whensoever I shall have knowledge that the rights of the Crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the Crown again; and I may not do it myself, I will certify and inform the Queen thereof, or some of her Judges; I will not respite or delay to levy the Queen's debts for any gift, promise, reward, or favour, where I may raise the same without grievance to the debtors; I will do right as well to poor as to rich in all things belonging to my office: I will do no wrong to any man for any gift, reward, or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debts or duties belonging

High Sheriff's Oath of all counties, cities, and towns (*c*) in England, [except London and Middlesex, Durham, Chester, Lancashire, and Westmorland.]

(*c*) 3 Geo. 1, c. 15, s. 18, confirmed by 3 & 4 Will. 4, c. 99, s. 6, and 5 & 6 Will. 4, c. 28. The Sheriff of the County Palatine of Chester takes the same oaths the Sheriffs of the several counties in *Wales* do, 3 Geo. 1, c. 15, s. 20, *post*, "*Welsh Sheriff's Oath*." The Sheriffs of *London and Middlesex* and those of the County Palatine of

Durham and Westmorland are to take the same oath as the Sheriffs of English counties, *except* that part that relates to the placing in or disposing of any of the offices of their Under-sheriffs, County Clerks, Bailiffs, or other Officers, or their continuance therein. *Ibid.* sect. 21.

to the Crown ; I will take nothing whereby the Queen may lose, or whereby her right may be disturbed, injured, or delayed ; I will truly return and truly serve all the Queen's writs, according to the best of my skill and knowledge ; I will take no bailiffs into my service but such as I will answer for, and I will cause each of them to take such oaths as I do, in what belongeth to their business and occupation ; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estates and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is appointed by the statute of this realm ; [I have not sold, or let to farm, or contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by myself, or any other person for me or for my use, directly or indirectly, my Sheriffwick or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever ;] I will truly and diligently execute the good laws and statutes of this realm ; and in all things well and truly behave myself in my office for the honour of the Queen and the good of her subjects, and discharge the same according to the best of my skill and power. So help me God.

Sheriff to take the oaths of allegiance, supremacy, and abjuration, in one of the Courts at Westminster or the Quarter Session.

The Sheriff shall, within six calendar months after his election, take and subscribe the oaths of allegiance, supremacy, and abjuration, and also take and subscribe the assurance in one of the Courts at Westminster, or at the General or Quarter Sessions of the Peace where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other ; 1 Geo. 1, c. 12, s. 2 ; 2 Geo. 2, c. 31, s. 3 ; 9 Geo. 2, c. 26, s. 3 (*d*).

(*d*) On *Michaelmas Day* at *Guildhall* the Sheriffs of London and Middlesex take also the following oath.—

Ye shall swear that ye shall be good and true unto our Sovereign Lady the Queen of England, and unto her heirs and successors ; and the franchise of the City of London within and without ye shall save and maintain to your power ; and ye shall well and lawfully keep the Shires of London and Middlesex, and the offices that to the same Shires appertain to be done well and lawfully, ye shall do after your wit and power ; and right ye shall do as well to poor as rich, and good custom you shall none break, ne evil custom arreare, and the Assize of Bread, all, and all other Victuals within the franchise of this City and without, well and lawfully ye shall keep, and do to be kept, and the judgments and executions of your Court ye shall not tarry without cause reasonable ; ne right shall you none disturb. The writs

that to you come touching the state and franchise of this City you shall not return, till you have shewed them to the Mayor and the Council of this City for the time being, and of them have advisement, and ready you shall be at reasonable warning of the Mayor for keeping of the peace and maintaining the state of the City ; and all other things that longen to your office, and the keeping of the said Shires, lawfully you shall do by you and yours ; and the City you shall keep from harm after your power, and the Shire of Middlesex ; ne the Gaol of Newgate you shall not let to farm. As help you God.

Ye shall also swear, that ye shall freely give all such rooms and offices of Serjeants and Yeomen, as shall happen to become void during the time ye shall remain in the Office of the Sheriffalty, to such apt and able person and persons as shall be by you nominated to the Lord Mayor and

Oath of Allegiance (e).

I, *G. M.* do sincerely promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria. So help me God.

Oath of Supremacy (f).

I, *G. M.* do swear that I do from my heart abhor, detest, and abjure as impious and heretical, that damnable doctrine and position that princes excommunicated or deprived by the Pope, or any authority from the see of Rome, may be deprived or murdered by their subjects or any other whatsoever: And I do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God.

Oath of Abjuration (g).

I, *G. M.* do truly and sincerely acknowledge, profess, testify and declare in my conscience, before God and the world, that our sovereign lady Queen Victoria is lawful and rightful Queen of this realm and all other her Majesty's dominions and countries thereunto belonging: and I do solemnly and sincerely declare that I do believe in my conscience, that not any of the descendants of the person who pretended to be Prince of Wales during the life of the late King James the Second, and since his decease pretended to be and took upon himself the style and title of King of England by the name of James the Third, or of Scotland by the name of James the Eighth, or the style and title of King of Great Britain, hath any right or title whatsoever to the crown of this realm or any other the dominions thereunto belonging: And I do renounce, refuse and abjure any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to her Majesty Queen Victoria, and her will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against her person, crown or

Court of Aldermen, and by them admitted, without any money or other reward to be had, taken, or hoped for in respect thereof, according to the act of Common Council made and provided in that behalf the nine and twentieth day of April, in the six and twentieth year of the reign of our Sovereign Lady Queen Elizabeth. As God you help.

Sheriffs elected at the general election day are to appear before the Court of Aldermen on the 14th day of September after their election, to enter into an obligation to the Chamberlain of the City in the penalty of £1000, conditioned to appear on Michaelmas Day at Guildhall, and to take this oath; if elected between the 14th and 22d of September, and they do not

take the oath on Michaelmas Day, or if elected at any other period, and they do not within six days after notice of election take the oath, they are liable to a penalty; if an Alderman of the City or a Commoner nominated by the Lord Mayor, of £600; if any other freeman, £400.

(e) There is an indemnity act passed annually to protect persons who have omitted to take the oaths of allegiance, &c. See *Stevenson and others*, 2 Barn. & Cr. 34; 1 Will. & M. st. 1, c. 8.

(f) No person to be summoned to take this oath, or be prosecuted for not obeying such summons, 31 Geo. 3, c. 32, s. 18.

(g) 6 Geo. 3, c. 63, s. 1.

dignity. And I will do my utmost endeavour to disclose and make known to her Majesty and her successors all treasons and traitorous conspiracies which I shall know to be against her or any of them. And I do faithfully promise to the utmost of my power to support, maintain and defend the succession of the crown against the descendants of the said James and against all other persons whatsoever, which succession, by an Act intituled "*An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject*," is and stands limited to the Princess Sophia, Electress and Duchess Dowager of Hanover, and the heirs of her body being Protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation and promise, heartily, willingly and truly upon the true faith of a Christian.

The following *Assurance* must at the same time, place, and by the same person be administered, taken and *subscribed*.

Assurance (h).

I, *A. B.*, do in the sincerity of my heart assert, acknowledge and declare that her Majesty Queen Victoria is the only lawful and undoubted Sovereign of this realm, as well *de jure*, that is, of right Queen, as *de facto*, that is, in the possession and exercise of the government. And therefore I do promise and swear that I will with heart and hand, life and goods, maintain and defend her right, title and government against the descendants of the person who pretended to be Prince of Wales during the life of the late King James, and since his decease pretended to be and took upon himself the style and title of King of England by the name of James the Third, or of Scotland by the name of James the Eighth, or the style of King of Great Britain, and their adherents, and all other enemies who, either by open or secret attempts, shall disturb or disquiet her Majesty in the possession and exercise thereof.

Test and
Corporation
Acts re-
pealed.

Acts relating to declarations against transubstantiation are repealed by 10 Geo. 4, c. 7, s. 1, without regard to any religious distinction. By the stat. of 9 Geo. 4, c. 17, the acts relating to the *sacramental test* are repealed, and in lieu thereof a *declaration* prescribed by the act is to be made and subscribed; but it does not apply to *Sheriffs* of counties, or cities, or towns. See 9 Geo. 4, c. 17, explained by 5 & 6 Will. 4, c. 28.

Instead of the oaths of *Allegiance*, *Supremacy*, and *Abjuration*, her Majesty's subjects professing the *Roman Catholic* religion must take the following oath.

Roman Catholics' Oath.

I, *G. M.*, do sincerely promise and swear, that I will be faithful and

bear true allegiance to her Majesty Queen Victoria, and will defend her to the utmost of my power against all conspiracies and attempts whatever which shall be made against her person, crown or dignity; and I will do my utmost endeavour to declare and make known to her Majesty, her heirs and successors, all treasons and traitorous conspiracies which may be formed against her or them: And I do faithfully promise to maintain, support and defend to the utmost of my power the succession of the crown, which succession, by an Act intituled "*An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject*," is and stands limited to the Princess Sophia, Electress of Hanover, and the heirs of her body being Protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm: And I do further declare, that it is not an article of my faith, and that I do renounce, reject and abjure the opinion, that princes excommunicated or deprived by the Pope or any other authority of the see of Rome may be deposed or murdered by their subjects or by any person whatsoever: And I do declare, that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority or pre-eminence, directly or indirectly, within this realm. I do swear that I will defend to the utmost of my power the settlement of property within this realm as established by the laws: And I do hereby disclaim, disavow and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm: And I do solemnly swear that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the Protestant religion or Protestant government in the United Kingdom: And I do solemnly in the presence of God profess, testify and declare, that I do make this declaration and every part thereof in the plain and ordinary sense of the words of this oath, without any evasion, equivocation or mental reservation whatsoever. So help me God.

This oath is to be administered in the same manner and time and by the same persons as the oaths for which it is substituted were. 10 Geo. 4, c. 7, s. 6. Before whom taken.

Oath of High Sheriff in Wales (i).

OATH OF OFFICE.

Ye shall swear that well and truly ye will serve the Queen in the office of Sheriff of the county of C. in Wales, and do the Queen's profits that belong to you by way of your office as far form as you can or may. Ye shall truly keep the Queen's rights and all that belong to the crown. Ye shall not assent to decrease, to lessen or to concealment of the Queen's rights or of her franchises. And whenever ye shall have knowledge that the Queen's rights or the rights of the crown be concealed or withdrawn, be it in lands, rents, franchises, suits or any other thing, ye shall do your power to make them be restored to the Queen again, and if you may not do it yourself ye shall certify the Queen or some of her council thereof, such as ye hold for certain will say it unto the Queen. Ye shall not respite the Queen's debts for any gift or favour when you may raise the same without great grievance to the debtors. Ye shall truly and

(i) Free from stamp duty, 3 & 4 Will. 4, c. 99, s. 6.

righteously trust the people of your sheriffwick, and do right to poor as to rich in all things that belongeth to your office. Ye shall do no wrong to any man for any gift or other behest or promise of goods for favour or sale. Ye shall disturb no man's right. Ye shall truly acquit all those of whom ye shall any thing receive of the Queen's debts. Ye shall nothing take whereby the Queen may lose, or whereby that right may be disturbed, letted, or the Queen's debts delayed. Ye shall truly return and truly serve all the Queen's writs as put forth as is in your cunning. Ye shall none have to be your under-sheriff of any of the Sheriff's clerks of the last year past. Ye shall take no bailiff into your service but such as you will answer for. Ye shall make each of your bailiffs make such oath as ye make yourself in that that belongeth to their occupation. Ye shall receive no writ by you or any of yours unsealed, or any sealed under the seal of any Justice, saving Justice in Eyre, of Justice assigned in the same shire where ye be sheriff in, or other Justices having power and authority to make any writs unto you by the laws of the land, or of Justice of Newgate. Ye shall make your bailiff of the true and sufficient men of the county. Ye shall not let your sheriffwick nor any bailiwick thereof to favour to any man. Ye shall truly set and return reasonable and due issues of them that be within your bailiwick after their estate and their honour, and make your panels yourself of such persons as be most meet, most sufficient and not suspected nor procured as is ordained by the statute, and over this in eschewing and restraint of the manslaughters, robberies, and other manifold grievous offences that be done daily, namely, by such as name themselves soldiers and other vagrant persons which increase in number and multiply, so that the Queen's subjects may not surely ride nor go to do such things as they have to do to their intolerable peril and grievance. Ye shall truly and effectually and with all diligence possible to your power execute the statutes as the statutes of Winchester and vagabonds. These things ye shall well and truly observe and keep. So help you God.

Before
whom
taken, &c.

The Oaths of Allegiance, Supremacy, and Abjuration, or instead thereof, in the case of a *Roman Catholic* subject, the oath before mentioned, must be taken in the same manner, &c. as Sheriffs of English counties are enjoined to do. The assurance also must be taken and subscribed in like manner.

Conse-
quence of
refusal.

If a person appointed refuse to take the oaths of office he was usually punished in the Star Chamber, but now he is proceeded against by criminal information in the Queen's Bench (*k*); a refusal to take the oaths is a refusal of the office (*l*). In counties of cities and counties of towns, as in London, certain penalties are attached to the refusal of the office (by particular statutes or by some bye-laws), and these penalties are recoverable by action.

(*k*) Dalt. 15; *Rex v. Woodrow*, 2 Term Rep. 731.

(*l*) *Star v. Mayor of Exeter*, 3 Lev. 116.

SECTION V.

OLD AND NEW SHERIFF.

IN the reign of Edward the Third (a) it was declared that any Sheriff abiding in his office above *One Year* should be liable to severe penalties and disabilities; but at a subsequent period of our history some relaxation was made to this rule of law by allowing the outgoing Sheriff, (unless lawfully discharged before,) to occupy his office during Michaelmas and Hilary Terms, after the year that his office was ended, if the incoming Sheriff had not his patent ready, and did not take the oaths (b), &c. Notwithstanding, however, these old statutes it was holden that the appointment might be "*durante bene placito*," or "*during the Queen's pleasure*" (c); and such was the form of the royal writ; and such is the form of the warrant of appointment prescribed by the recent enactment (d) in the reign of our late beloved sovereign. Therefore until a new Sheriff be named his office cannot be determined unless by the demise of the Crown, or by his own death: in the former case he may hold his office for six months after the demise, unless sooner displaced by the successor (e). In the latter, if any High Sheriff of any county of *England* or *Wales* shall happen to die before the expiration of his year, his *Under-sheriff*, or *Deputy*, shall nevertheless continue in office, and execute the same *in the name of the deceased Sheriff* until another Sheriff be appointed and sworn; and the Under-sheriff, or Deputy, is answerable for a proper discharge of the duties of his office in all respects as the deceased Sheriff would have been if he had been living; and the security given by the Under-sheriff, or Deputy, to the deceased Sheriff is to stand as a security in the meantime (f): in such a case the Under-sheriff, or Deputy, is by virtue of this statute a *quasi* High Sheriff, and stands in that relation to the world and to the incoming Sheriff.

Old and New Sheriff, continuance in office, &c.

Who acts in case of the death of the High Sheriff.

When no demise of the Crown or death of the High Sheriff determines the office the usual period when High Sheriffs receive

Expiration of office by efflux of time.

(a) 14 Edw. 3, c. 7; 28 Hen. 6, c. 3; 8 Edw. 9, c. 4; 23 Hen. 6, c. 8; 42 Edw. 3, c. 9; 6 Hen. 8, c. 18.
(b) 12 Edw. 4, c. 1; 17 Edw. 4, c. 6; 23 Hen. 6, c. 38.

(c) 4 Rep. 32.
(d) 3 & 4 Will. 4, c. 99; *ante*, "Warrant of Appointment."
(e) 1 Ann. st. 1, c. 8; Dalt. 7, 8.
(f) 3 Geo. 1, c. 16, s. 8.

their warrants of appointment is, as before observed, in Hilary Term ; but, *note*, as the appointment is now “ *durante bene placito*,” they are not necessarily made out then (*g*), and are sometimes, for reasons influencing her Majesty in Council, postponed.

Relation in which they stand to each other.

It is highly important to define and know the true relation between the new and old Sheriff, and their relation to the world at the time when the former receives this warrant of appointment. The warrant of appointment *per se* does not affect their relative situation, but operates only as an *authority* to the incoming Sheriff to qualify himself for entering upon his office, and to take from the outgoing Sheriff a transfer of all writs, prisoners, &c. ; such was the practical effect of the patent, and such it is conceived is that of its substitute the present warrant of appointment. It becomes then material to consider when and by what process their relative positions are changed, that is, when and by what process the one becomes charged and the other discharged from the custody of the county. By analogy to the old law the rule may thus briefly be laid down : *the old Sheriff is not discharged, nor the new Sheriff charged till two things are done, viz. the receipt of the warrant of appointment by the incoming Sheriff, and the delivery to the outgoing Sheriff of the signed duplicate list and account mentioned in the seventh section of the recent statute* (*h*), “ to whom the same shall be a good and sufficient discharge of and from all, &c. *without any Writ of Discharge or other writ whatsoever.*”

When the old Sheriff is discharged, and the new charged.

The section of the statute above alluded to (*i*) is in the following words :—“ That every Sheriff of any county, city, liberty, division, town corporate, or place, shall at the expiration of his office *make out and deliver* to the new or incoming Sheriff *a true and correct list and account under his hand* of all prisoners in his

(*g*) As occurred this year in the cases of Staffordshire and Glamorganshire, the Sheriffs of which were not appointed until the 26th day of February. John Stevenson Salt, Esq. of Heeping Cross, of the former, and Howell Gwyn, of Alltwen, of the latter, in the room of Nash Vaughan Edwards Vaughan, of Lanely, Esq. ; and

on the 4th of April Robert Oliver Jones, of Founen Castle, Esq. in place of Howell Gwyn, Esq.

(*h*) 3 & 4 Will. 4, c. 99, s. 7 ; Fitz. Case, Cro. Eliz. 28 ; *Wesly v. Skinner*, Noy, 51 ; 19 Vin. Abr. 451 ; and cases cited.

(*i*) 3 & 4 Will. 4, c. 99, s. 7.

custody, and of all writs and other process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the said incoming Sheriff the several matters intended to be transferred to him, and shall thereupon turn over and transfer to the care and custody of the said incoming Sheriff all such prisoners, writs, and process, and all records, books, and matters appertaining to the said office of Sheriff; and the said incoming Sheriff shall thereupon *sign and give a duplicate of such list and accounts* to the Sheriff going out of office, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned and transferred to the said incoming Sheriff, and the further charge of the execution of the writs, process, and other matters therein contained without any Writ of Discharge or other writ whatsoever; and the said incoming Sheriff shall *thereupon stand and be charged* with the said prisoners, and also with the execution and care of the said writs, process, and other matters contained in the said list and account, as fully and effectually as if the same writs and process had been turned over by indenture and schedule; and in case any Sheriff shall refuse or neglect at the expiration of his office to make out, sign, and deliver such list and account as aforesaid, and to turn over the process aforesaid in manner aforesaid, every such Sheriff so neglecting or refusing shall be liable to make such satisfaction by damages and costs to the party aggrieved as he, she, or they shall sustain by such neglect or refusal."

There are three things notable in this section; *firstly*, that the writs, prisoners, &c. are not to be turned over by the indenture and schedule required by the 20 Geo. 2, c. 37, but by the true and correct list and account under his (the old Sheriff's) hand of all prisoners, &c. with all such particulars as may be necessary to explain the several matters intended to be transferred; *secondly*, the signing and giving a duplicate of such list and account to the old Sheriff, which act of itself operates as a discharge to the old Sheriff and a charge to the new Sheriff, without any writ of discharge, as under the old law, or any other writ whatsoever; *thirdly*, the remedy a party aggrieved has for any damage sustained against the old Sheriff for neglecting or refusing to make out, sign and deliver the list and account aforesaid, with all such particulars as might be necessary to explain

Contents of section.

the several matters transferred. The list may be in the following form, *mutatis mutandis*.

The ORIGINAL (j) List and Account

*Of all the several Debtors in the Gaol at C. in the County of C.
&c. &c.—*

<i>Names of Debtors.</i>	<i>At whose Suit.</i>	<i>Process.</i>	<i>Out of what Court.</i>	<i>Debt.</i>	<i>Return of Writs.</i>
John Doe.	B. A.	Capias.	Queen's Bench.	£100	
Richard Roe.	M. A.	Ca. sa.	Common Pleas.	£200	
<i>And of the Prisoners on the Felons' Side of the Gaol, &c. &c.—</i>					
John Penn Convicted of bigamy at the last Spring Assizes, and sentenced to seven years' transportation.					
Richard Fenn Committed by Matthew Atkinson, Esq. on a charge of horse-stealing, and detained for trial.					
<i>And of all Writs unexecuted, &c. &c.</i>					
<i>Writs.</i>	<i>Whence issued.</i>	<i>Plaintiff's Name.</i>	<i>Defendant's Name.</i>	<i>Debt.</i>	<i>When delivered returnable.</i>
Capias. Ca. sa.	Queen's Bench. Common Pleas.	W. B. J. B.	G. T. T. H.	£80 £100	

Omission at the risk of old and not of the new Sheriff.

If there is any omission in this list or account as regards writs or prisoners or any necessary explanation regarding the same, the old Sheriff is liable for such negligence, and not the new Sheriff; and the latter need take no notice thereof (*k*).

Transfer of prisoners.

With regard to the transfer of prisoners, the rule *was* that the new Sheriff was not bound to receive them except at the gaol (*l*), but if he did receive them elsewhere, he became thereby equally charged with them (*m*), but *now* there is no distinction as regards time or place between the transfer of writs and prisoners; *eo in-*

(j) When delivered by the new to the old, for original use duplicate.

(k) *Westlie's case*, 3 Co. 72; Dalt. 16.

(l) *Smalman v. Lane*, 2 Leon. 54; Cro. Eliz. 366; 39 Vin. Ab. 42.

(m) Dalt. 16.

stante he signs and gives the duplicate list to the old Sheriff, the one becomes discharged from, and the other charged with, all prisoners as well as all writs and matters set forth in the said list and account.

A question, *primò facie* countenanced by some old authorities (n), might be started, whether (supposing the new Sheriff to have notice of any material fact so omitted *aliundè* as by word of mouth or by letter) the statute is satisfied? But even upon that hypothesis we are disposed to think there would notwithstanding be a breach of duty on the part of the old Sheriff, and that he would be liable in damages to the party aggrieved; for three reasons; *firstly*, because the authorities do not go to the extent usually contended for, the one being simply and singly a question of power in an Under-sheriff to make a *transfer without indenture*, and the latter whether a High Sheriff, who had taken charge of prisoners without indenture, could be *indicted*, and it was holden that an *indictment* would lie "car un indictment est le suit del' Roy;" *secondly*, because when these decisions were given the "delivery by indenture was by the order of the common law" (o), whereas now it is by the statute law of the land; *thirdly*, because if the party aggrieved assigned for breach in his declaration, that the defendant "did not make out and deliver to the new Sheriff a *true or correct list and account under his hand* of all, &c. with all such particulars, &c." in the words of the 7th section of the statute, it would, we are disposed to think, be no plea to say that the incoming Sheriff had notice of *the fact* so omitted by word of mouth or letter or by other means dehors the list and account, because such a plea would neither deny nor confess and avoid the former allegation.

Notice *aliundè* how it affects the new Sheriff.

Reasons in the negative.

In the Register (p) there is to be found the form of a *writ* commanding the old Sheriff to transfer by indentures all things appertaining to his office to his successor, but it is now clearly by implication abolished, as the statute is imperative that he shall, at the expiration of his office, turn over, &c., and in case

(n) *Poulter v. Greenwood*, Barnes, 367, no great authority, for it is generally said "that law is to be found there which is to be found no where else;" see also *Sir Thomas Read's case*, 2 Roll. Rep. 146.

(o) Reg. Brev. 295; *Hanmer v. Winner*, 19 Vin. Abr. 454; *Westlie's case*, 3 Rep. 72.

(p) Reg. Brev. 295; *Westlie's case*, 3 Rep. 72.

of neglect or refusal shall be liable to make such satisfaction by damages and costs to the party aggrieved as he, she, or they shall sustain by such neglect or refusal.

Transfer by
power of
Attorney.

As the *transfer*, &c. is at this day seldom if ever made or accepted by the High Sheriff in person, but by another in his stead under a power of attorney, the following may be the form of the precedent.

Power of Attorney.

From new High Sheriff to C. D. (his agent), &c.

STAMP.
ONE
POUND
TEN
SHILLINGS.

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING: Whereas I, A. B., of in the county of C. by her Majesty's warrant of appointment, bearing date the day of A. D. 1838, have been appointed High Sheriff of the said county instead of M. A. Esq. the late High Sheriff: Now KNOW YE, that I have nominated, constituted and appointed, and do by these presents nominate, constitute and appoint C. D. of in the said county, gentleman, for me and in my stead to receive and take from the said M. A., or from his Under-sheriff, or from such other person or persons as he shall or may appoint for that purpose, a true and correct list and account of all prisoners in his custody, and of all writs and other process in his hands not wholly executed by him with all such particulars as shall be necessary to explain to me the several matters intended to be transferred to me, and all records, books and matters appertaining to my office of Sheriff; and further for me and in my stead to accept and receive the care and custody of all prisoners, &c. and to sign and give a duplicate of such list and account to the said M. A. and whatever else may be necessary to carry the same into effect.

In witness whereof I have hereunto set my hand and seal this day of A. D. 1838.

(L. S.) G. M.

Power of Attorney.

From old Sheriff to C. D. (his agent), &c.

STAMP.
ONE
POUND
TEN
SHILLINGS.

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING: Whereas by her Majesty's warrant of appointment Sir G. M., Bart. of hath been duly appointed High Sheriff of the county of C. in my stead: Now KNOW YE, that I have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint J. B. of in the said county, gentleman, for me and in my stead to make out and deliver to the said Sir G. M. Bart. a true and correct list and account of all prisoners in my custody and of all writs and other process in my hands not wholly executed by me with all such particulars as may be necessary to explain to him the several matters intended to be transferred to him, and to turn over and transfer to his care and custody all such prisoners, writs and process, and all records, books, and matters appertaining to the said office of Sheriff, and further for me and in my stead to accept and receive a duplicate of such list and account and all such prisoners, writs, process, records, books and matters appertaining to the said office.

In witness, &c.

Having then laid down in *general* terms the relation in which the old and new Sheriffs stand to each other and the world—how and when the office determines in the one and commences in the other—the position of the Under-sheriff in case of the death of the High Sheriff, and the liability of the High Sheriff for neglecting or refusing to give to his successor the necessary information for a due administration of justice, referring for the consequences and details of what has been stated to the more appropriate heads of *Escape*, &c.—we next proceed to the appointment of his officers, his Under-sheriff, Bailiffs, Gaoler, Replevin Clerks, and Deputies.

SECTION VI.

UNDER-SHERIFF.

By the *Common Law* he that hath an office of trust cannot make a *Deputy* without express words in his patent or grant so to do (a). The office of High Sheriff is one of trust, but at a very early period of our law an exception or distinction obtained in the books with regard to this officer; and the rule was, that when he was a *ministerial* officer only he might appoint a deputy, but when he had *judicial* duties to discharge, that he could not name a deputy, and was obliged to do the same in his own proper person (b); and this rule prevailed although there were no express words in his patent enabling him to appoint a deputy.

Under-sheriff.

It appears that the High Sheriff in ancient times had his Under-sheriff; (first called Under-sheriff by the stat. of Westminster 2, c. 39,) but that he might have executed the office himself if he pleased (c). Also it appears that he might have been constituted by *parol* as well as by writing, and that he was constituted such at the will and pleasure of the High Sheriff, and, consequently, removeable on the determination of that will and pleasure (d), although he made him irrevocable. But it is now declared (e), “that from and after the passing of this Act, (29th August, 1833,) every person so appointed Sheriff as aforesaid

(a) Plowd. 37; Dyer, 278; Litt. 379.

(b) 6 Rep. 12; Jenk. Rep. 181.

(c) Hob. 13; stat. Westm. 1, c. 15; 2 Inst. 191.

(d) Ibid.

(e) 3 & 4 Will. 4, c. 99, s. 5.

How appointed.

shall, *within one calendar month* next after the notification of his appointment in the London Gazette, *by writing* under his hand, nominate and appoint some fit and proper person to be his Under-sheriff, and shall transmit a duplicate thereof to the Clerk of the Peace for the county, to be by him filed, and which he is hereby required to file among the records of his office, and for which he shall be entitled to demand and have from such Under-sheriff the sum of five shillings and no more; and such appointment and duplicate shall not be liable to any *stamp duty* whatever."

The appointment may be in the following form (f):—

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING: Whereas I, Sir G. M., Baronet, of —, in the county of C., have been appointed, during her Majesty's will and pleasure, High Sheriff of the said county, by her Majesty's warrant of appointment, bearing date the — day of —, in the year of our Lord, 1838: Now KNOW YE, that I have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint Matthew Atkinson of —, in the said county, gentleman, my Under-sheriff of and for the said county, and do depute and authorize him to act and to execute all things to the said office of Under-sheriff in any wise appertaining or belonging. Dated this — day of —, A. D. 1839.

G. M. (g).

No qualification or disability.

An Attorney in Superior Courts may be Under-sheriff.

There is no *qualification* for, and seemingly no *disability* (h) for, the office of Under-sheriff, except perhaps that of an attorney in *actual* practice, respecting which a slight difficulty arises. It will be observed, that by the statute of 1 Hen. 5, c. 4, (now wholly repealed by 1 Vict. c. 55, s. 1,) it was declared, "that no Under-sheriff, Sheriff's Clerk, Receiver, nor Sheriff's Bailiff, be attorney in any Court of the King during the time that he is in office with any such Sheriff; and by rule of the Court of Queen's Bench, M. T. 1654, s. 1, it was ordered, "that if he does he is to be expelled from the employment of an attorney and not to be re-admitted." This rule was made by the Court in strict accordance with the letter and spirit of the old statute, and to enforce a more uniform obedience to it; so that there is no statute disabling an attorney from being an Under-sheriff,

(f) The *High Sheriff* must transmit a duplicate of this instrument to the Clerk of the Peace. Both the original and duplicate are free from all *stamp duty*. The duplicate should be on parchment as it becomes a record when filed.

(g) *Seal of office* is not required by the act—merely that it should be *by writing* under his hand as contradistinguished from a *parol* appointment.

(h) The stat. of 9 Edw. 2, 16, st. 2, as to a steward or bailiff to a great lord, applies only to *Sheriffs*.

and as regards the rule of Court referred to, we are disposed to think that the Queen's Bench (for it is only a rule of *that* one Court) would not act upon it, the basis of the rule having been repealed by a higher tribunal. That an Under-sheriff therefore may at the present day be an attorney of the Courts at Westminster during the time he is serving the office, and that the evasive system of practising in the name of another is no longer necessary, admits of little doubt. Whether the repeal of the statute of Henry the Fifth, and the consequent union of the two characters in one and the same person, was prudent, we hesitate to affirm, we must hope for the best; but we cannot help observing, that within the extent of our own limited practice, an Under-sheriff, who was in fact the attorney on the record, returned the jury process and acted as Under-sheriff on *a view* of a right of way. No improper motives were or are imputed to him on that occasion, (*de mortuis nil nisi bonum*,) but so long as human nature is as it is, so long will the most honest and upright intentions be exposed to, if they do not receive impressions from, times and circumstances incompatible with a proper discharge of duty.

Reasons why he may.

But although, as above suggested, an Under-sheriff may practise as an attorney in any of the Superior Courts during the time he serves the office, yet neither the Under-sheriff nor his deputy can act as a solicitor, attorney or agent, or sue (i) out any process at any *general or quarter sessions* of the peace within the county, under a penalty of £50, for the statute of 22 Geo. 2, c. 46, remains unrepealed and in full force.

Under-sheriff cannot practise as an attorney in general or quarter sessions.

By stat. 3 Geo. 1, c. 15, s. 10, after reciting that the office of Under-sheriff and other offices and places in the disposal of the High Sheriff had of late years been frequently sold and let to farm contrary to the several statutes (k) theretofore made for restraining Sheriffs from such practices, and contrary to the oath and duty of a Sheriff; for remedy thereof it was enacted, "that it shall not be lawful to or for any person or persons whatsoever to buy, sell, let or take to farm, the office of Under-sheriff, Deputy-sheriff, Seal-keeper, County-clerk, Shire-clerk, Gaoler, Bailiff, or any other office or place pertaining to the office of

(i) See *Faulkner v. Chevell*, 5 Ad. & E. 213. Declaration and pleadings in a similar case.
(k) 4 Hen. 4, c. 5; 23 Hen. 6, c. 9; see also as to the construction of these statutes *Ellis v. Nelson*, 3 Keb. Rep. 678; *Plowd.* 27; *Moore*, 781; *Dalt.* 23, 24.

Cannot buy,
&c. office of
Under-she-
riff.

High Sheriff of any county or shire in England or Wales, or to contract for, promise, or grant, for money or other reward or benefit, the said offices or places or any of them; nor to give, take, promise or receive any other consideration whatsoever for the said office or any of them, directly or indirectly by themselves, or any person in trust for them or for their use," under the penalty of 500*l.*, recoverable in a *qui tam* action, such action being commenced *within two years* after the offence committed (l). But this act did not extend to the *Sheriffs of London and Middlesex*, the county palatine of *Durham*, the county of *Westmoreland*, or to the Sheriffs of any city or town being a county of itself, as to their placing in or disposing of any of the offices, places, or employments, of their Under-sheriffs, County-clerks, Bailiffs, or other officers, or the continuance therein, nor to hinder any High Sheriff from constituting an Under-sheriff or Deputy-sheriff as by law he may; nor to hinder the Under-sheriff, in any case of the High Sheriff's death, when he acts as High Sheriff, from constituting a deputy; nor to hinder the receipt of or accounting to the Sheriff, &c. for legal fees (m). But by a subsequent statute it was declared, that "*no Sheriff of London and Middlesex shall accept, demand, take or receive of his or their Under-sheriff any sum or sums of money, gratuity, or present whatsoever, for the execution of the place of Under-sheriff*," nor oblige him to be at any expense in relation thereto, which has been usually borne by the High Sheriff, except, &c.

But the two Secondaries, who act as Under-sheriffs of London, have purchased their places of the city of London time immemorial.

Security
from Under-
sheriff.

Formerly it was doubted whether the High Sheriff could take a security from his Under-sheriff to indemnify him from escapes, &c., but in *Norton v. Simmes* (n) it was holden that he might; and Dalton says if the High Sheriff will *sleep quietly* and take *his repose in safety*, he shall do well and wisely to look for and to take *good security* from his Under-sheriff before he do trust him with his office. Indeed, looking at the stat. of 3 Geo. 1, c. 15, s. 8, which provides, in case of the death of the High Sheriff, that the security given by the Under-sheriff and his pledges shall stand as a security to all persons, it seems no

(l) *Vide cases cited supra.*

(n) Hob. 13; 2 Browl. 283.

(m) See Hob. 13; 2 Browl. 281; Dalt. 3, 514.

longer optional whether a security is to be taken or not. The security may be according to the following precedent:—

Covenants between High Sheriff and his Under-sheriff.

This indenture made this day of in the second year of the reign Deed stamp.
of our Sovereign Lady Queen Victoria and of the year of our Lord 1838,
between A. B., of in the county of C., of the first part and C. D. and
E. F., of the said county, of the other part: Witnesseth that the said A. B.
by her Majesty's warrant of appointment, bearing date the day of
A. D. 1838, having been appointed High Sheriff of the county of C. during
her Majesty's will and pleasure, and having taken upon himself the duties
thereof; for the great trust and confidence which the said A. B. hath in
the said C. D., and for other the considerations hereinafter mentioned,
hath constituted and appointed, and by these presents doth constitute and
appoint him to be his Under-sheriff of the said county of C.: and doth
authorize, appoint and empower him to sign, seal and execute, and as the
act and deed of the said Sheriff to deliver all assignments of bail-bonds,
bills of sale, assignments of goods and chattels taken in execution, and
also to take inquisitions upon process directed to the said Sheriff, to make
out precepts for the election of members to serve in parliament; to pre-
side or to assist in the County Courts, and upon the hustings at the elec-
tion of knights of the shire; to appoint County-clerks, Replevin-clerks
and Bailiffs; to receive rules for the returning writs; and give receipts
and discharges for all monies whatever, to be received or collected in the
office of Sheriff of the said county; to sign the name of the said Sheriff to
all certificates and other instruments and writings requiring the same;
and to do all other acts in the name of the said A. B., as Sheriff of the said
county of C., necessary and requisite in the due execution of the said
office. In consideration whereof, the said C. D. and said E. F., as surety
for the said C. D., for themselves, their heirs, executors and admini-
strators, do hereby covenant, promise and agree to and with the said A. B.,
his executors and administrators, in manner following: that is to say, that
he, the said C. D., shall and will well and sufficiently perform the office
of Under-sheriff during the shrievalty of the said A. B.; and in that ca-
pacity summon and return all juries and inquests to be impanelled before
her Majesty's Justices of assize or of the peace, or upon any issue what-
soever, to be tried on inquisition to be taken within the said county; and
also grant warrants on, and execute, or cause to be executed, all writs,
process, precepts, mandates and warrants, to be directed to the said Sheriff
from the several Courts of law and equity, or other competent authority;
and make due and sufficient inquisitions and returns thereon as by law is
required; and shall and will save harmless and keep indemnified the
said sheriff, his heirs, executors and administrators, and his and their
goods and chattels, lands and tenements, of and from all and all manner
of action and actions, cause and causes of actions, suits, fines and amer-
ciaments, contempts and forfeitures, and all other charges and incum-
brances whatsoever, which shall or may happen to be assessed or imposed
upon the said A. B., as Sheriff, by reason of the executing or not exe-
cuting, returning or not returning, or the misreturning any such writs,
process, precept, mandate or warrant, or touching or concerning the same,
or the summoning or impanelling the juries as aforesaid; and also of
and from any escapes, rescues, or the letting any prisoner voluntarily or
negligently go at large; or the taking of insufficient bail, or the refusing
to take bail, or for the making or not making any assignments of a bail-

bond or bonds; or for or by reason of any negligence, misfeasance, non-feasance, abuse, omission, delay or contempt, or any other cause or thing whatsoever, that should or ought to be done by the said Under-sheriff, or agent, or by the Clerks, Bailiffs or servants to be employed concerning the said office. And also shall and will, upon demand, produce and show, or deliver to the said Sheriff a true inventory or account of the different writs in the office of the said Sheriff, and what has been done thereon respectively; and that it shall be in the power of the said Sheriff upon complaint to discharge any Bailiff or other person in the service of the said Sheriff, and to appoint another in his stead for the remainder of the shrievalty. And further, that the said Under-sheriff shall from time to time give due notice to the said Sheriff of such personal attendance as shall be requisite to be made by him; and shall attend on and assist him thereat, and be aiding and assisting in raising and levying such force within the said county as the Sheriff shall be enjoined to raise; and cause to be executed and punished all such persons as shall be convicted or attainted, according to his or her sentence: and well and faithfully do, execute and perform all and every act, matter and thing, belonging to the said office of Under-sheriff. And the said *A. B.* doth hereby for himself his heirs, executors and administrators, covenant, promise and agree to and with the said *C. D.*, his respective executors and administrators, in manner following: that is to say, that the bonds or obligations to be entered into or given to the said Sheriff by the Gaoler and Bailiffs, or by any person or persons to be arrested during the said shrievalty, shall be considered as well for the indemnity of the said Under-sheriff or agent as of the said Sheriff. And that the said Under-sheriff performing the aforesaid covenants, shall have and enjoy the said office of Under-sheriff during the shrievalty of the said *A. B.*, and keep by himself or deputy the Courts by law established in the said county; and have and take all lawful fees, dues, profits and emoluments whatsoever belonging to the said office of Sheriff. In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed, &c.

Under-sheriff's power as deputy cannot be abridged.

Note.—The High Sheriff cannot appoint one Under-sheriff and yet abridge his power, no more than the Queen may that of the High Sheriff(*o*); for it is essential to a deputy to have the whole power of his principal, (save only the power of making a deputy, for that implies an assignment of his whole power, which cannot be); and a covenant or condition to restrain his power as deputy is void(*p*). On the other hand, he cannot enable him to do a thing which the Sheriff himself ought to do in person—as to execute a writ of dower, &c.—for in all cases where the writ commands the Sheriff *to go in person*, there the writ is his commission, from which he cannot deviate(*q*).

(*o*) *Norton v. Simmes*, Hob. 13; 2 Broul. 283; 2 Inst. 191.

(*p*) *Parker v. Kett*, 1 Salk. Rep. 95; 12 Mod. 468, S. C.

(*q*) 6 Co. 12; Hob. 13; Jenk. 181.

UNDER-SHERIFF'S OATH.

Before the statute of 27 Eliz. c. 12, the Under-sheriff was never sworn (r). By that statute a brief form was prescribed, but by a more recent statute it is enacted (s) that the following oath shall be taken by all Under-sheriffs of any county or counties of *South Britain*, (except the several counties of *Wales* and County Palatine of *Chester*,) before they enter upon the execution of their offices respectively.

Under-sheriff's Oath.

I *A. B.* do swear, that I will well and truly serve the Queen's Majesty in the office of Under-sheriff of the county of *C.*, and promote her Majesty's profit in all things that belong to the crown; I will not assent to decrease, lessen, or conceal the Queen's rights, or the rights of her franchises; and whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if I may not do it of myself, I will certify and inform some of her Majesty's Judges thereof; I will not respite or delay to levy the Queen's debts for any gift, promise, reward or favour, when I may raise the same without great grievance to the debtors; I will do right as well to poor as to rich in all things belonging to my office; I will do no wrong to any man for any gift, reward or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the Exchequer all those of whom I shall receive any debt, duties, or sums of money belonging to the crown: I will take nothing whereby the Queen may lose, or whereby her right may be disturbed, injured, or delayed; I will truly return and truly serve all the Queen's writs to the best of my skill and knowledge; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estates and circumstances; and make due panels of persons able and sufficient, and not suspected, or procured, as is appointed by the statutes of this realm; [I have not bought, purchased, or taken to farm, or contracted for, promised or given any consideration whatsoever, by myself, or any other person for me or for my use, directly or indirectly, to any person or persons whatsoever, for the office of Under-sheriff of the county of _____, which I am now to enter upon and enjoy, nor for the profits of the same, nor for any bailiwick thereof, or any other place or office belonging thereunto; I have not sold or contracted for, or let to farm, nor have I granted or promised, for reward or benefit, by myself or any other person for me, or for my use, directly or indirectly, any bailiwick thereof, or any other place or office belonging thereunto;] I will truly and diligently execute the good laws and statutes of this realm; and in all things well and truly behave myself in my said office for her Majesty's advantage, and for the good of her subjects, and discharge my whole duty according to the best of my skill and power. So help me God.

(r) 1 Roll. Rep. 274.

(s) 3 Geo. 1, c. 15, s. 19.

Before
whom
sworn, &c.

The time, manner, and person before whom this oath is to be made, are precisely the same as in the case of the High Sheriff, but for perspicuity's sake we again set out the section of the recent statute which governs and controls it. "And be it further enacted, that each and every person so appointed Sheriff and Under-sheriff as aforesaid, (except the Sheriffs of London (t) and Middlesex, and their Under-sheriffs,) shall, before he enter upon the execution of his office, take the oath of office heretofore and now required by law, which oath shall be *fairly written on parchment* (without being subject to any stamp duty) and *signed by him*, and shall and may be sworn before the Barons of his Majesty's Exchequer, or any of them, or *any one* of his Majesty's Justices of the peace for the county of which he shall be appointed Sheriff or Under-sheriff, and the same shall be thereupon transmitted to the Clerk of the Peace for the same county, who is hereby required to file the same among the records of his office, and for which he shall be entitled to demand and have from such Sheriff or Under-sheriff the sum of *five shillings*, and no more (u)."

Oaths of
Allegiance,
&c.

The oaths of *Allegiance*, *Supremacy*, *Abjuration* and *Assurance* are to be taken and subscribed in the same manner as the High Sheriff, and within the same time; or instead of the oaths of Allegiance, Supremacy, and Abjuration, her Majesty's subjects professing the *Roman Catholic religion* must take the oath prescribed by the statute of 10 Geo. 4 (x).

Welsh Under-sheriffs.

With regard to the Under-sheriffs of the counties in *Wales*, there is no statute making it imperative upon them to take *any oath of office*, for the statutes of 27 Eliz. and 3 Geo. 1, are in express terms confined to *England*, but the oaths of *Allegiance* (y) and *Abjuration* (z) must be taken and subscribed by them.

(t) In the oath of the Under-sheriffs of London, Middlesex, Durham, Westmoreland, and of all cities and towns being counties of themselves, the words in brackets are omitted; 3 Geo. 1, c. 15, s. 21, n.

(u) 3 & 4 Will. 4, c. 99, s. 6.

(x) See *ante*, p. 20, 22.

(y) Will. & Mar. st. 1, c. 8.

(z) 13 & 14 Will. 3, c. 6; 6 Geo. 3, c. 53, s. 1; with regard to the oath of supremacy, see 31 Geo. 3, c. 32, s. 18; also *ante*, p. 21.

The Under-sheriff is the *general deputy* (a) of the High Sheriff for all purposes, and the law looks upon them as one person (b). Nature of office.

He does all things in the name of the officer himself, and for whom his grantor must answer (c). Acts in the name of the High Sheriff.

The power to make Bailiffs and Precepts is a *necessary* consequence of his deputation, although the High Sheriff does not acquaint him therewith (d). Power to make Bailiffs, &c.

The High Sheriff cannot appoint two Deputy Sheriffs extraordinary (e). Not two deputies extraordinary.

No action will lie against him as *Under-sheriff*.

All writs and process directed to the Sheriff are usually delivered at once to the Under-sheriff (f) to make out the proper warrants thereon, which, as we have seen, he may do by force of his deputation; and they are obliged to receive them in any place and at all times within their county, without taking of any thing other than such fees as the law alloweth, and to make out warrants thereon. But the delivering out warrants before they have the writs in their custody subjects them to a penalty of 10*L.*; and under the like penalty every warrant must have the same day and year set down thereon as shall be set down on the writ itself (g). Writs, &c. usually delivered to Under-sheriff in the first instance.

By the statute of 42 Edw. 3, c. 9 (h), it was enacted, "that no Sheriff, Under-sheriff, nor Sheriff's Clerk abide in his office above one year;" but by 1 Vict. c. 55, s. 1, the above is re- Under-sheriff may abide more than one year in office.

(a) *Parker v. Kett*, 1 Salk. Rep. 96; 12 Mod. 468, S. C.; *Drake v. Sykes*, 7 Term Rep. 113; *Snowball v. Goodricke*, 1 N. & M. 236.

(b) *Saunderson v. Baker*, 3 Wils. 317; *Cameron v. Reynolds*, Cowp. 403.

(c) *Moor*, 70, pl. 191; *Roll. Abr. Auth. & Copyhold*, H.; *Combe's case*, 9 Rep. 140; *Fenton v. Small*, 2 Ld. Raym. 1418; *White v. Cuyler*, 6 Term

Rep. 176; 1 Salk. 96; *Cowp.* 403; *Dr. & St.* 234; *Latch.* 187.

(d) *Parker v. Kett*, *suprà*.

(e) 2 Wils. 378.

(f) See 3 & 4 Will. 4, c. 42, s. 20, as to the necessity of having a deputy resident within one mile of the Inner Temple Hall for all such purposes.

(g) 6 Geo. 1, c. 21, ss. 63, 64.

(h) See also 23 Hen. 6, c. 8.

42 Edw. 3, repealed as relates to the time during which *Under-sheriffs and Sheriff's Clerks* may abide in the respective offices.

A deputy at will.

When the will is determined by the death of the High Sheriff.

The Under-sheriff being, as already stated, but a deputy at the will of the High Sheriff, (even although he make him irrevocable,) he necessarily, at common law, would cease to be such the moment that will was determined either by the death or discharge of his grantor. To remedy the inconveniences arising because of the death of a High Sheriff, it was enacted (i), "That if any High Sheriff of any county of England or Wales shall happen to die before the expiration or determination of his year, or before he be lawfully superseded, in such case the Under-sheriff or Deputy Sheriff by him appointed shall nevertheless continue in his office, and shall execute the same, and all things belonging thereunto, *in the name of the said deceased Sheriff*, until another Sheriff be appointed for the said county, and sworn in manner as is hereinafter directed; and the said Under-sheriff or Deputy Sheriff shall be answerable for the execution of the said office in all things and to all respects, interests, and purposes whatsoever, during such interval as the High Sheriff so deceased would by law have been if he had been living; and the security given to the High Sheriff so deceased by the said Under-sheriff and his pledges shall stand, remain, and be a security to the King, his heirs and successors, and to all persons whatsoever for such Under-sheriff's due performance of his office during such interval.

SECTION VII.

BAILIFFS.

Qualification.

By the stat. of 14 Edw. 3, st. 1, c. 9, it is enacted, that "Sheriffs shall hold the same (*their counties*) in their own hands and put in such *Bailiffs* and Hundredors *having lands* (k) within the said bailiwicks and hundreds for whom they will answer."

(i) 3 Geo. 1, c. 15, s. 8.

(k) It is to be regretted that this qualification is so generally overlooked in the appointment of Bailiffs; there was formerly in use a writ called "a

ballivo amovendo" to remove a Bailiff from his office for want of sufficient land in the bailiwick; see form of writ, *post*, p. 47.

Notwithstanding this statute there are two counties, namely, *Cumberland* (i) and *Cornwall* (k), where there are no bound-bailiffs; but Lord Kenyon, in speaking of Cumberland, says, "what protection the Sheriff of Cumberland has in cases of this kind that other Sheriffs have not it is not necessary to inquire in this case; but though he may not have bound-bailiffs, he may perhaps learn, whenever the question arises, that he is bound, like all other Sheriffs, either to execute the writ personally or to procure it to be executed by some other person, for whom he is responsible" (l); and the dictum, though extra-judicial, is in strictest accordance with the first principles of our law, and applies with equal force to Cornwall and other counties as to the one to which it has more immediate reference.

For all practical purposes it is sufficient to divide and class them in the following manner:—

1. Bound-bailiffs, *vulgariter*, Bum-bailiffs (m).
2. Special Bailiffs.
3. Bailiffs of Liberties.

BOUND-BAILIFFS are such as are usually *bound* with sureties to the High Sheriff in an obligation for the due execution of their office (for he may take a security from them, as he is answerable for their acts) (n). Of these in London there are thirty-six, called Serjeants at Mace, and each Serjeant gives £800 security to the Sheriffs for the faithful discharge of his office. The indemnity bond from a Bailiff to the High Sheriff may be according to the following precedent (o).

Bound-bailiff, definition of.

Indemnity Bond.

KNOW ALL MEN BY THESE PRESENTS that we C. D. of, &c. and E. F. of, &c. are held and firmly bound to A. B. Esq. High Sheriff of the county of W. in the sum of £ to be paid to the said A. B. or to his certain attorney, executors, administrators or assigns; for which payment to be well and truly made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, and every of them jointly, severally and firmly by these presents, Sealed with our seals.

Indemnity bond.

Dated, &c.

(i) *Hamilton v. Dalsiel*, 2 W. Bl. 952; *Taylor v. Richardson*, 8 Term Rep. 506.

(k) *Sawle v. Paynter*, 1 D. & R. 309.

(l) *Taylor v. Richardson*, *suprà*.

(m) The term is used by Serjeant Glyn in *Sanderson v. Baker*, 3 Wils. 309.

(n) Stil. 18.

(o) Their power cannot be abridged, 2 Brownl. 283.

WHEREAS the said Sheriff, at the request of the said C. D. and of his sureties, the said E. F. and G. H., hath nominated and appointed the said C. D. to be one of the Bailiffs of the said Sheriff, (during the pleasure of the said Sheriff,) permitting him to receive to his own use all lawful fees usually received by Sheriff's Bailiffs in the said county of but reserving to the said Sheriff the poundage and such other fees and profits on writs of execution and extent, as have been usually received by the Sheriff of the said county of , and all other fees and emoluments to the said Sheriff or his Under-sheriff belonging: AND WHEREAS the said E. F. and G. H., in consideration of the nomination and appointment of the said C. D. as aforesaid, have consented and agreed to execute such bond or obligation as is above written with such condition as is herein-after expressed and contained: NOW THEREFORE THE CONDITION of the above-written obligation is such, that if the said Bailiff shall duly execute all warrants or mandates to him directed by the said Sheriff, Under-sheriff, or deputies, or any of them, in the name of the said Sheriff; AND ALSO, if the said Bailiff shall make true and sufficient returns in writing to all warrants which shall come to his hands as such Bailiff for execution, and file the same with such returns in the said office of the said Sheriff, within twenty-four hours after the same shall be required of the said Bailiff by a notice in writing signed by the said Sheriff, his Under-sheriff, or deputies, or one of them, and given to the said Bailiff, or left for him at his last or usual place of abode; AND ALSO, if the said Bailiff shall and will upon the execution of any *capias* take good and sufficient bail, if the same shall be tendered, and also sufficient pledges and sureties in replevin, and shall and will deliver up to the said Sheriff, Under-sheriff, or deputies, all bonds and other securities taken to or belonging to the said Sheriff within two days after the same shall be taken; AND ALSO, if the said Bailiff shall, on the execution by him of any warrant, or any writ of *distringas*, which may hereafter issue pursuant to the provisions of the third section of an Act passed in the second year of the reign of King William the Fourth, intitled "*An Act for Uniformity of Process in Personal Actions in his Majesty's Courts of Law at Westminster*," duly serve on the defendant a copy of such writ, with the notice subscribed thereto as required by the said Act, if he can be met with, or, if not, if the said Bailiff shall leave the said copy of such writ and notice at the place where such *distringas* shall be executed; AND ALSO, if the said Bailiff shall, upon or forthwith after the execution by him of any warrant by him of any writ of *capias* which may hereafter issue, deliver to every person upon whom such process shall be executed by the said Bailiff a copy of such writ of *capias*, together with every memorandum or warning subscribed thereto, and all indorsements thereon, and shall forthwith certify in writing to the said Sheriff the true day of the execution thereof; AND ALSO, if the said Bailiff shall not suffer any escape, or permit any prisoner in his custody as Bailiff aforesaid to go at large without a lawful authority, nor permit any prisoner to go at large who shall be left with him or at his house for safe custody by the said Sheriff, or any other Bailiff, without the said Sheriff, or his order in writing, first had and obtained; AND ALSO, if the said Bailiff shall give day by day instructions in writing for the Sheriff's return to each and every writ and process upon which any warrant shall have been granted to him, or under or in respect of or by colour of which he shall in any way act or assume to act as Bailiff to the said Sheriff, whether such writ or writs shall have been executed or not; AND ALSO, if the said Bailiff shall safely conduct all persons in his custody as Bailiff aforesaid to the com-

mon gaol by law appointed for keeping the prisoners of the said Sheriff, for debt or on any civil process, immediately after the expiration of twenty-four hours from the time of arrest, if in custody only on mesne process; and immediately after the arrest of any prisoner in execution, unless discharged out of custody by due course of law; AND ALSO, if the said Bailiff shall make a true return and inventories of all goods and chattels seized in execution by him as Bailiff to the said Sheriff, and before removal thereof pay the rent in arrear not exceeding one year, pursuant to the statute in that case made and provided, and all taxes due in respect thereof, pursuant to the statute, and shall indemnify the said Sheriff on account of any mistake or default relating thereto; AND ALSO, if the said Bailiff shall pay to the said Sheriff, Under-sheriff, or deputies the consideration or purchase-money mentioned in every bill of sale or assignment, executed by the said Sheriff, Under-sheriff, or deputies at the request of the said Bailiff, notwithstanding the acknowledgment of the receipt thereof by the said Sheriff contained in any such bill of sale or assignment; AND ALSO, if the said Bailiff shall and will forthwith pay to the said Sheriff, Under-sheriff, or deputies, all monies received by the said Bailiff on any arrest or levy by him made, or with which he shall be entrusted for the said Sheriff, without deduction; AND ALSO, if the said Bailiff shall certify and return to the said Sheriff, Under-sheriff, or deputies, at the office of the said Sheriff, all unexecuted warrants of the said Sheriff, on or before the day of next; AND ALSO, if the said Bailiff shall in all things truly, lawfully, and honestly demean and behave himself as Bailiff aforesaid, and faithfully and diligently serve and attend the said Sheriff, his Under-sheriff, and their deputies, and in due and lawful manner all their and every of their lawful commands or directions, touching any manner of service, incident or belonging to the said office of Sheriff, shall and will execute and perform; AND ALSO, if any writ of attachment shall issue, or any rule or order of Court for such writ shall be made, or any verdict or judgment given against the said Sheriff or Under-sheriff, or either of them, their or either of their executors or administrators, or against the Under-sheriff, in any case wherein the said Bailiff shall have made any arrest or levy in the name of or under the authority of the said Sheriff, the said Bailiff shall and will immediately pay or cause to be paid to the said Sheriff, or Under-sheriff, or deputies, or one of them, the debt, damages, costs, and charges, in every such case paid by them, or any of them, or for payment whereof the said Sheriff or Under-sheriff may be liable; AND ALSO, if the said Bailiff shall well and truly pay or cause to be paid to the said Sheriff, his Under-sheriff, or deputies, or one of them, the costs and charges of prosecuting or opposing any motion in or application to any Court touching or concerning any matter wherein the said Bailiff shall act or assume to act as Bailiff to the said Sheriff, and the costs and charges which the said Sheriff may be called upon to pay to any party or parties, person or persons, by reason of any such prosecution or opposition; AND ALSO, if any action or suit be commenced or prosecuted against the said Sheriff, his Under-sheriff, or deputies, or any of them, touching or concerning any matter wherein the said Bailiff shall act or assume to act as Bailiff to the said Sheriff, the said Bailiff shall well and truly pay to the said Sheriff, his Under-sheriff, or deputies, or one of them, all costs, charges, damages, and losses by them or any of them incurred, paid, or sustained, in or about the defence or in consequence of such action or suit; AND ALSO, if any action or suit be prosecuted at the instance of the said Sheriff, Under-sheriff, or deputies,

on any bail bond, or indemnity bond, or replevin bond, taken by the said Sheriff or given as his security, in any case wherein the said Bailiff shall have acted or assumed to act as such Bailiff, whether such action or suit be prosecuted at the request or with the consent of the said Bailiff and his sureties aforesaid, or not, the said Bailiff or his sureties, or one of them, shall well and truly pay the costs and charges thereof to the said Sheriff, his Under-sheriff, or deputies, and indemnify them respectively touching the same; AND ALSO, if the said Bailiff and his sureties, some or one of them, shall indemnify the said Sheriff and his Under-sheriff from all damages, loss, costs, and charges which they or either of them shall or may suffer, sustain, or be put unto, or be liable to suffer, sustain, or be put unto, for or by reason of the payment of any money by the said Sheriff, Under-sheriff, or deputies, to any person or persons, or by reason of any return to any writ or process made by the said Sheriff, Under-sheriff, or deputies, at the request of the said Bailiff; AND ALSO, if the said Bailiff and his said sureties, some or one of them, their or some one of their heirs, executors, or administrators, shall and will save harmless and indemnify the said Sheriff and Under-sheriff, their and each of their executors and administrators, from and against all actions, suits, fines and amerancements, penalties, contempts, forfeitures, loss, costs, charges, damages, and expenses, which may be commenced, prosecuted, imposed, or set upon them, or either of them, or which they or any or either of them may suffer, pay, or be liable unto, for or by reason of any extortion or escape happening by the act or default of the said Bailiff, or for or by reason of the executing, not executing, returning, not returning, or mis-return of any writ, process, mandate, precept, or warrant, the not taking bail, taking insufficient bail, the not bringing into Court the body of any defendant, or any other cause whatsoever happening by or arising from the act or omission of the said Bailiff; then the above-written obligation shall be void, otherwise to be and remain in full force and virtue.

Before he take upon him to impanel or return any inquest, jury or tales, or to intermeddle with the execution of process in any Court of Record under the penalty of 40*l.* he must receive and take the following oath :—

Bailiff's Oath.

Bailiff's
oath.

I, *A. B.*, shall not use or exercise the office of Bailiff corruptly during the time that I shall remain therein, neither shall or will accept, receive, or take by any color, means, or device whatsoever, or consent to the taking of any manner of fee or reward of any person or persons for the impanelling or returning of any inquest, jury, or tales, in any Court of Record for the Queen, or betwixt party and party, above two shillings, or the value thereof, or such fees as are allowed and appointed for the same by the laws and statutes of this realm, but will, according to my power, truly and indifferently with convenient speed, impanel all jurors and return all such writ or writs touching the same as shall appertain to be done by my duty or office during the time that I shall remain in the said office. So help me God.

Before

whom taken.

The recent statute does not apply to *Bailiffs*, only to *Sheriffs* and *Under-sheriffs*, therefore the oath must be received and taken

before the persons named in the statute of Elizabeth (*p*) ; that is to say, before the justices of assize, or one of them, of the same circuit wherein that county is whereof he shall be Bailiff; or before the *custos rotulorum*, or two justices of the peace, whereof one to be of the quorum, of the said county whereof he shall be Bailiff, or before the head officer of the place if it be a town corporate (*q*).

We must now endeavour to lay down the nature of the office of a Bailiff of this kind—the relation in which he stands to his principal (the High Sheriff) and to the world at large—and the most intelligible way of doing so, appears to be by placing him in juxta position with the Under-sheriff, whom we have already in general terms described. The Under-sheriff, as before observed, is the *general servant* of the High Sheriff for all purposes within the scope of the office ; but as between a Bound-bailiff and the High Sheriff there subsists no such general privity : his true character is this, he is appointed by the High Sheriff to act on each occasion of executing process wherein he is concerned, in other words, when a warrant is granted to him he becomes the special officer of the High Sheriff for that occasion, *and for that occasion only* ; and upon this principle it is holden, that in order to affect the High Sheriff, to prove him a *general* bailiff and that he has given a bond as such is not sufficient (*r*), as it would be in the case of the Under-sheriff.

This distinction should not be overlooked, for in evidence it is highly important ; for instance, the declarations of the Under-sheriff (*s*) are in general admissible to affect the High Sheriff, because he is his general deputy ; but the declarations of the Bailiff, even although he has given a bond, are not so, until it be proved by the warrant or otherwise that he is the special agent of the High Sheriff, when such declarations are admissible to affect his principal (*t*). But as the evidence to connect the Under-sheriff and Bailiff with their principal (the High Sheriff)

The relation in which he stands to the Sheriff, &c.

Bailiff and Under-sheriff distinguished.

Admissions of, how they affect the High Sheriff.

(*p*) 27 Eliz. c. 12, s. 2.

(*q*) As to oath of supremacy enjoined by the statute, see 31 Geo. 3, c. 32, s. 18 ; and *ante*, 21.

(*r*) See *Drake v. Sykes*, 7 Term Rep. 113 ; *Minshall v. Lloyd*, 2 M. & W. 456 ; 3 Camp. 228 ; and cases *infra*.

(*s*) *Yabley v. Doble*, 1 Ld. Raym. 190 ; *Kempland v. Macaulay*, Peake's Ca. 75 ; *Sanderson v. Baker*, 3 Wils. 309 ; 2 Stark. on Evid. 738.

(*t*) *Ibid.* See also *Drake v. Sykes*, *supra* ; *Wilson v. Norman*, 1 Esp. c. 154 ; *M'Neil v. Perdard*, *ibid.* 263 ; *Lloyd v. Harris*, Peake's Ca. 174.

will require much consideration hereafter, we proceed to examine the legal character of those who fall under the second division of our subject, namely, Special Bailiffs, premising only in addition, with regard to the Under-sheriff's admissions, that the doctrine above laid down has been much restricted by the case of *Snowball v. Goodricke* (u), where it was holden that admissions of the Under-sheriff are not evidence against the Sheriff, *unless they accompany some official act or tend to charge himself*.

SPECIAL BAILIFFS.

Special
Bailiffs.

A Special Bailiff is one nominated by the plaintiff in the cause, or by his attorney, and appointed by the High Sheriff *pro hac vice*, and for whose acts, so long as the special agency continues, the plaintiff, and not the High Sheriff, is liable. Where there is an *express* appointment of a Special Bailiff no difficulty can well arise; but where such appointment is to be inferred from circumstances it is otherwise, and has been the cause of much argument in the different Courts. The result of the various authorities may fairly be stated to be this, that the appointing a Special Bailiff or the giving special directions to a Bound-bailiff, or any interference of the attorney with the execution of the process, discharges the High Sheriff from all liability *so long as the agency of the Special Bailiff continues* (v). And he was holden discharged by the plaintiff's appointing a Special Bailiff to manage the sale, although he *returned* that *he* had sold and that *he* had paid the sum illegally deducted for the auction, &c. (x).

But, note, the *mere expression of a wish* by the attorney, that a particular officer may be employed to execute the writ, does not constitute the latter the plaintiff's agent(y).

Whether what is said or written, or done, amounts to an appointment of a Special Bailiff, is a question of fact rather than of law (y).

BAILIFFS OF LIBERTIES.

Bailiffs of
Liberties.

Bailiffs of Liberties are those Bailiffs who are appointed by

(u) 4 B. & Ad. 541.
(v) *Hamilton v. Dalsiel*, 2 W. Bl. 952; *De Moranda v. Dunlin*, 4 T. R. 119; *Taylor v. Richardson*, 8 Term Rep. 605; *Porter v. Viner*, 1 Ch. Rep. 613; *Pallister v. Pallister*, *ibid.* n. See also *Foster v. Blakelock*, 5 B. &

Cr. 331; 8 D. & R. 48; *Balson v. Meggat*, 4 Dowl. 558; *Ford v. Leche*, 1 Nev. & P. 737.

(x) 1 Ch. Rep. *supra*.

(y) 1 Nev. & P. 737; and see 4 Dowl. 558.

every lord within his liberty to execute process and do such offices therein as the Under-sheriff doth at large in the county (x).

By the statute of the 5 Edw. 3, c. 4, "it is accorded and established, that no Sheriff, Under-escheator, *Bailiff of Franchise*, Wapentake, Hundred, nor Tithing, shall from henceforth be, except he have *lands* sufficient in the same county whereof to answer to the king and his people, if any will complain." And if the lord of a liberty shall choose any man to be Bailiff of his liberty who hath not sufficient lands within the same county; then a writ shall be sent to the Sheriff (of the same county wherein such liberty is), commanding him to discharge or remove such Bailiff, and to choose another Bailiff in his place (a). And an alias pluries, and an attachment, lieth against the Sheriff if he shall not do according as he was commanded by such writ.

Their sufficiency.

How removed.

The writ in the Register is in the following words:—

"Rex Vic' salutem. Cum in Statuto apud Westm. nuper ædito contineatur, quod nullus sit Vicecomes vel *ballivus libertatis*, wapentachij, hundredi, nec trithingi, nisi habeat terras et tenementa sufficientia in eodem comitatu unde nobis seu populo nostro in hac parte respondere possit si quis super eum conqueri voluerit; jam intelleximus quod tu *W.* qui terras seu tenementa in eodem comitatu non habet *ballivum libertatis nostre* de *B.* fecisti, in nostri contemptum et populi nostri in hac parte damnum non modicum et gravamen et contra formam statuti prædicti. Et ideo tibi præcipimus quod si ita sit; tunc ipsum *W.* a ballivâ prædictâ sine dilatione amoveri et alium loco suo competentem constiteri et ordinari facias juxta formam statuti prædicti."

Writ of ballivo amovendo.

T. &c. (b).

Before he take upon him to impanel or return any inquest, jury or tales, or to intermeddle with the execution of process in any Court of Record, under the penalty of 40*l.*, he must receive and take before the person or persons appointed by the statute of Elizabeth(c) the oath therein prescribed. The oath has been already set out at large under the division of Bound-bailiffs, to which we now beg leave to refer, and for other matters of and concerning the same, such as the administering of the same, and the like.

Oath of office.

By whom administered, &c.

(x) 27 Eliz. c. 12; Wood's Inst. 206; *Norton v. Simmes*, Hob. 13; Dr. & St. 234. See also *Newland v. Cliffe*, 3 B. & Ad. 630.

(a) Fitz. 164; Registr. 178.

(b) Registr. 178.

(c) 27 Eliz. c. 12; see *ante*, p. 45, also as to the oath of supremacy.

Relation to
High Sher-
riff.

Although the High Sheriff is not in anywise answerable (*d*) for the acts of a Bailiff of a liberty within his county, yet as there does subsist an intimate connexion between them as regards the execution of process within the liberty, it is highly important to determine the true nature and extent of that connexion; and herein likewise of the Sheriff's power and obligation to infringe upon the franchise or liberty.

Effect of
non omittas
clause.

The High Sheriff, as already observed, is the immediate officer of all the Courts at Westminster, so to him all writs are directed, although it be of a matter or thing done within a liberty or franchise (*e*); if the writ contains a *non omittas* clause the liberty is thereby made *pro hac vice* parcel of the Sheriff's bailiwick, and the Sheriff *must* enter and execute the writ within the liberty (*f*); but if the writ does not contain a *non omittas* clause it must be executed by the *Bailiff of the liberty* (*g*), to whom the Sheriff directs his mandate for that purpose; and if the Sheriff, or his officers by his command, enter the franchise without a *non omittas* (although the execution of the writ will be good as against all the world but the lord of the franchise) (*h*) he, the Sheriff, will be liable to an action at the suit of the lord of the franchise for such entry; and a Bailiff executing such a writ is a trespasser, and if killed it is only manslaughter and not murder (*i*).

Omittas
clause when
inserted as
of course.

By the long established and recognized practice of the Court of Queen's Bench, a *non omittas* may be issued in the first instance, without suing out a previous writ and waiting for the Sheriff's return of *mandavi ballivo qui nullum dedit responsum* (*k*); and the new writ of *capias*, as prescribed by the 1 & 2 Vict.

(*d*) *Borthman v. Earl of Surrey*, 2 Term Rep. 5; by stat. 27 Hen. 8, c. 24, "the amercement for insufficient returns made by Bailiffs of franchises shall be set on the Bailiff's head, and not on the Sheriff's;" or the plaintiff may have an action against the Bailiff if the return be false, the Sheriff not being liable at common law for the false return of the Bailiff.

(*e*) Finch. 52; Dalt. 186, 459.

(*f*) 2 Inst. 453; 19 Vin. Abr. Return, 206; 5 Geo. 2, c. 27, s. 3; *Grant v. Bagge*, 3 East, 128; *Carrett v. Smallpage*, 9 East, 330; *Bowring v. Pritchard*, 14 East, 289; *Bradshaw*

v. Davis, 1 Chit. Rep. 374; *Rex v. Stobbs*, 3 Term Rep. 740; *Rex v. Meade*, 2 Starkie Rep. 205; *Adams v. Osbaldeston*, 3 Barn. & Ad. 490.

(*g*) *Newland v. Cliffe*, 3 B. & Ad. 633.

(*h*) *Fitzpatrick v. Kelly*, 3 Dougl. 30, cited in argument in *Rex v. Stobbs*, 3 Term Rep. 740; *Piggott v. Wilkes*, 3 B. & A. 502; *Bell v. Jacobs*, 1 M. & P. 309; 4 Bing. 523, S. C.; *Sparks v. Spink*, 7 Taunt. 311.

(*i*) *Rex v. Meade*, 2 Stark. Rep. 205.

(*k*) *Carrett v. Smallpage*, 9 East Rep. 336; Tidd's Prac. 147, 9th edit.

c. 110, must contain the *non omittas* clause, and the omission of it would render the writ irregular.

Note.—He may *ex officio*, and without any writ of *non omittas*, enter the franchise and execute his office wheresoever the Queen is a party, as in every felony or suspicion of felony, or otherwise in any action (*m*), or wheresoever the lord of the franchise or the Bailiff is a party to the suit. So where the High Sheriff is judge as well as minister, as on writs of inquiry (*n*) and of distringas juratores. So where the Bailiff makes default, as when the Sheriff mandavit ballivo libertatis, and the Bailiff nullum dedit responsum. So where a distress is taken within a franchise, and the Bailiff of the franchise will not deliver them, then the Sheriff, upon complaint to him made, may deliver them *et hoc vicecomiti ex necessitate conceditur* (*o*).

Where Sheriff may enter franchise without a *non omittas*.

Whether the Sheriff should direct his mandate to the lord or to the bailiff of the franchise, and whether in the lord's name or in that of his deputy, the returns, &c. and other ministerial acts are to be done, are questions that derive much light from a recent argument in the Court of Queen's Bench (*p*), and the result may fairly be stated to be this: that if a lordship, with a return of writs therein be granted by the crown, with a special provision in the grant "*that the grantee by his Bailiff should have the full return of all writs,*" or to the like effect, the mandate may be directed to the Bailiff by name, and the return made in his name, but if the grant contains no such special provision, the Bailiff is but the lord's deputy, and all things must be done in the name of the principal.

Direction of mandate, whether to the lord or bailiff.

It may reasonably be asked, how the High Sheriff is to know whether the grant contains such a provision or not? The answer is, that if he can obtain no certain knowledge of the fact, nor of the usual practice (which cannot well happen), the only safe course is to direct his mandate to the lord as principal, and not to the Bailiff.

In the case of *Newland v. Cliffe* the following are the places said to have the mandates and precepts directed to and returned by the Bailiff in his own name, namely, *Isle of Ely*, *Soke of Peterborough*, of which the Marquis of Exeter is lord; the hundred of *Towland* and *Laytonstone*, of which the Duke of

Newland v. Cliffe.

(*m*) Plowd. 216, 243; 5 Co. 91.
(*n*) *Carrett v. Smallpage*, 9 East, 333, and authorities there cited.

(*o*) Dalton, c. 40.
(*p*) *Newland v. Cliffe*, 3 B. & Ad. 433. See too 6 Adol. & Ellis, 752.

Manchester is lord ; the hundred of *Huntingstone*, of which the Earl of Sandwich is lord ; the hundreds of *Norman Cross*, of which the Earl of Carysfort is lord ; of *Scardale*, of which the Duke of Devonshire is lord ; and *Kidwelly* in Carmarthen, of which Lord Cawdor is lord ; and to these may be added, the *Liberty of Gower*, in Glamorganshire (*q*), of which the Duke of Beaufort is lord. All lords that have franchises, or their Bailiffs, shall attend upon the justices of assize and gaol delivery on pain of forfeiture of their franchises (*r*).

Attendance
at assizes.

And "all Bailiffs (*s*) and officers of liberties which *in times past* have used or ought to attend upon the justices of assize, justices of gaol delivery, and justices of peace of the same shire wherein such liberties and franchises be, shall attend upon," &c. and make due execution of all process to them to be directed, and that also all such Bailiffs, or their deputies or deputy, shall give their attendance and assistance upon the Sheriff, together with the Sheriff's Bailiffs, at all courts of gaol delivery from time to time, for execution of prisoners according to justice (*t*).

Upon this statute it was holden, that as the Bailiffs of a certain liberty had usually attended the quarter sessions, and made returns of the jurors resident within the liberty, that a fine imposed upon the Bailiff for refusing to summon a jury to attend at such sessions, in obedience to the Sheriff's precept, was properly imposed (*u*).

The Bailiff of a franchise hath no authority *out* of the franchise (*x*).

A Bailiff of a liberty is an officer *judicially* noticed by the Courts, but a Sheriff's Bailiff is not (*y*).

SECTION VIII.

GAOLERS.

Gaoler.

A Gaoler is one that hath the custody of the place where prisoners are kept.

(*q*) *Wapentake of Holderness* in the East Riding of Yorkshire, *Rex v. Jaram*, 4 B. & Cr. 692 ; and see also *Rex v. Meude*, 2 Stark. 205.

(*r*) 20 Edw. 4, 6 Br. Forfeiture, 115.

(*s*) 27 Hen. 8, c. 24.

(*t*) See also 2 Hawk. P. C. ch. 8, s. 6.

(*u*) *Rex v. Jaram*, 4 B. & Cr. 692.

(*x*) *Boothman v. Earl of Surrey*, 2 Term Rep. 5.

(*y*) Pasch. 23 Car. 1, B. R.

By stat. 14 Ed. 3, c. 10, "The gaols shall be rejoined to the Sheriffs, and the Sheriffs shall have the custody of the same as before; and they shall put in keepers for whom they shall answer;" 13 R. 2, c. 15 (a), confirmed by 19 Hen. 7, c. 10, which enacts, "that every Sheriff shall have the custody of the King's common gaols in the county where he is Sheriff, *except gaols whereof any persons or body corporate have the keeping of estate of inheritance*; provided that no Sheriff have the custody of the King's Bench and Marshalsea." By stat. 8 & 9 Will. 3, c. 7, it is enacted, "That the office of Marshal of the King's Bench and Warden of the Fleet, shall be executed by those who have the inheritance of the said prisons or their deputies; and the profits of their office may be sequestered on motion to the Court of King's Bench to satisfy a judgment had against them for an escape."

In Sheriff's custody.

Another exception to the general rule that the Sheriff has the custody of county gaols may be adduced in the case of the Sheriff of the county of Chester. The office of the Constable of the Castle of Chester is a patent office granted by the crown, and the prisoners committed for offences within the county are confined in the castle under his charge, and not under that of the Sheriff of the county (b).

Castle of Chester.

Every county (except as excepted) hath *two* gaols, one for debtors, which may be in any house or where the Sheriff pleases, the other for the peace and the matters of the crown, which is the county gaol (c); *but note*, although the Sheriff may remove his gaol from one place to another within his county, yet he must keep his prisoners within it, and not suffer them to go at large out of the prison, even though he himself attends them, without it be by virtue of and in obedience to an *habeas corpus* from some court of justice (d).

Every gaol in the kingdom is the Queen's gaol *pro bono publico*, although many lords of franchises have the custody of them, and some in fee (e); Lord Holt said none can claim a gaol as a franchise, unless they have also a gaol delivery of felony (f).

Every gaol belongs to the Queen.

(a) See also 11 & 12 Will. 3, c. 10, made perpetual by 6 Geo. 1, c. 19; 4 Geo. 4, c. 64, s. 12.

(b) *Rex v. Antrobus*, 2 Ad. & Ellis, 791.

(c) *Balder v. Temple*, Hob. 202;

Latch. 16; 1 And. 345; 1 Sid. 318.

(d) *Ibid.*; 4 M. & W. 145.

(e) 2 Inst. 100, 589, 705.

(f) *Regina v. Taylor*, 1 Salk. Rep. 343.

Office of
Gaoler not
to be
bought,
sold, &c.

By stat. 3 Geo. 1, c. 15, s. 10, "none shall buy, sell, let, or take to farm the office of *Gaoler* of any county or shire in England or Wales, or to contract for, promise, or grant for money or other reward or benefit, the said office or place; nor to give, take, promise, or receive any other consideration whatsoever for the said office directly or indirectly by themselves, or any person in trust for them, or for their use, under the penalty of 500*l.* recoverable in a *qui tam* action of debt, provided the suit be commenced within two years after the offence committed." "He shall not be an Under-sheriff or Bailiff, nor shall be concerned in any occupation or trade whatsoever" (g).

Gaoler's relation to the High Sheriff.

From what has been advanced it will be evident that the relation in which the gaoler stands to the Sheriff is that of *servant*, and for whose conduct he must answer—to the Queen if it be a criminal matter, or in a civil matter to the party aggrieved. And being such, the Sheriff may discharge him at his pleasure, and if he refuses to quit possession for forty-eight hours after due notice to him in that behalf, he may be ejected in manner pointed out by the 27th section of the statute of 4 Geo. 4, c. 64, the statute in which all other statutes on the subject are consolidated, and to which reference must always be had for information. Now seeing that the High Sheriff is answerable in law for the acts of his gaoler, in the language of Mr. Dalton, "if he will sleep quietly and take his repose in safety, he shall do well and wisely to look for and to take good security from his *gaoler* before he do trust him with his office." The security may be in the following form :

Bond from Gaoler.

KNOW ALL MEN BY THESE PRESENTS that we *T. T.*, of _____, and *E. F.* of, &c., are held and firmly bound unto *A. B.* of, &c., Esquire, Sheriff of the county of *W.* aforesaid, in £ _____, of good and lawful money of Great Britain, to be paid to the said Sheriff, or his certain attorney, executors, administrators, or assigns, for the true payment whereof we bind ourselves jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated this _____ day of _____, in the _____ year of the reign, &c., and in the year of our Lord, &c.

WHEREAS the above-named *A. B.* being by the Queen's most excellent Majesty appointed High Sheriff for the county of *W.* aforesaid, hath, at the instance and request of the above-bounden *T. T.*, authorized, nomi-

nated, and appointed the said *T. T.* to be his gaoler or keeper of the gaol in and for the said county of *W.*, for and during all such times as the said *A. B.* shall be and continue High Sheriff of the county of *W.* aforesaid, with full power and authority to execute the said office in as large and ample a manner as any former gaoler or gaol-keeper have or hath heretofore lawfully executed the same. Now the condition of this obligation is such, that if the said *T. T.* do and shall from time to time, and at all times so long as the said *A. B.* shall continue High Sheriff of the said county, keep in safe custody, as well all such prisoner and prisoners as are now in the said county gaol, or in the custody of the keeper of the said gaol for *M. A.*, Esquire, the last preceding High Sheriff of the said county, and turned over and transferred, or which shall be turned over and transferred by the said *M. A.*, or his deputy, to him the said *A. B.*; and by him the said *A. B.* delivered, or which shall be delivered into the custody and keeping of the said *T. T.*, as keeper of the said gaol, for him the said *A. B.*; as also all and every prisoner or prisoners, which at any time or times hereafter shall be committed, sent, or delivered to the said *T. T.*, his servants, agents, deputy or deputies, upon or by virtue of any warrant or warrants, precept or precepts, or commandment whatsoever, or by or from the said Sheriff, his Under-sheriff, deputy or deputies, or other person employed and entrusted by him to manage or execute the office of Sheriff for the county of *W.* for the time being, or from or by any of her Majesty's justices of the peace, justice or justices of assize, of nisi prius, gaol delivery, or oyer and terminer, or of or from any other person or persons having lawful power and authority in that behalf. And also if the said *T. T.* do give his attendance upon the said Sheriff at the assizes and general gaol delivery, and general quarter sessions of the peace, to be holden in and for the said county; and safely conduct to the assizes, general gaol delivery, general quarter sessions of the peace, or any other lawful Court of judicature to be holden in and for the said county, all such persons then in his custody as shall be required by any lawful authority and command. And also shall convey such prisoners to the common gaol again upon the like command of any magistrate or magistrates, or court of judicature. And also if the said *T. T.* be attending, aiding, and assisting upon the said High Sheriff at all and every time and times when any execution shall be done within the said county, upon any person or persons attainted or to be attainted of or for high treason, murder, felony, or for any other capital crime. And also, if the said *T. T.* do and shall, as often as he is required and desired, and at his own costs and charges, make and deliver to the said *A. B.*, or his Under-sheriff, a true and perfect calendar, containing all the prisoners' names within the said gaol, or in his custody, containing and mentioning also the several causes of their and every of their respective imprisonments, and in all things well and truly execute the office of gaoler of and for the said county of *W.*, during all the term aforesaid. And lastly, if the said *T. T.*, his heirs, executors, and administrators, and every of them, do and shall, at all and every the time and times hereafter, save, defend, and keep harmless and indemnified the said *A. B.*, his heirs, executors, and administrators, and every of them, and his and their goods and chattels, lands, and tenements, of, from, and against all and every escape or escapes of any prisoner or prisoners, delivered or to be delivered over to him the said *A. B.*, his servants, agents, deputy or deputies, or any of them, by any warrant or warrants, precept or precepts, or commandments whatsoever, as aforesaid; or for or by reason of any neglect or default or abuse of the said *T. T.*, his

servants, agents, deputy or deputies, in his said office, during such time as he shall continue gaoler and keeper of the said county gaol as aforesaid; and likewise from and against all and all manner of action and actions, suits, troubles, judgments, executions, fines, issues, amerciaments, forfeitures, and all other costs and damages whatsoever, which at any time or times hereafter shall or may arise, grow, or happen to be brought upon the said Sheriff, for or by reason of any such escapes, neglect, or default as aforesaid; or for any other cause aforesaid, relating to the said office of gaoler and keeper of the said county gaol as aforesaid; then this obligation, &c.

Statutes by
which gaols
are now re-
gulated.

The statute above referred to and by which gaols are now regulated (4 Geo. 4, c. 64, amended by 5 Geo. 4, c. 85,) is intitled, "*An Act for Consolidating and Amending the Laws relating to the Building, Repairing, and Regulating of certain Gaols and Houses of Correction in England and Wales,*" (10th July, 1823,) after reciting "that the laws now existing relative to the building, repairing, and regulating of gaols and houses of correction in *England and Wales* are complicated, and have in many cases been found ineffective:" and that "it is expedient that such measures should be adopted, and such arrangements made in prisons as shall not only provide for the safe custody, but shall also tend more effectually to preserve the health and to improve the morals of the prisoners confined therein, and shall insure the proper measure of punishment to convicted offenders;" and after reciting that the classification, superintendence, and employment of prisoners might be improved,

It repeals *in toto*,

The 11 & 12 Will. 3, c. 19.

13 Geo. 3, c. 58.

14 Geo. 3, c. 59.

22 Geo. 3, c. 64.

24 Geo. 3, sess. 2, cc. 54, 55.

29 Geo. 3, c. 67.

55 Geo. 3, c. 48.

58 Geo. 3, c. 32.

It repeals *in part*,

The 1 Edw. 3, st. 1, c. 7, so far as it relates to inquiry to be made of gaolers, which by duress compel prisoners to appeal.

4 Edw. 3, c. 10, so far as it relates to Sheriffs and gaolers receiving offenders without taking any thing.

14 Edw. 3, st. 1, c. 10, so far as it relates to the punishment

of a gaoler, compelling a prisoner by duress to become an approver.

7 Jac. 1, c. 4, so far as relates to the providing houses of correction, to the appointment, authority, and allowance of the governor, and to his accounting to justices for persons committed to his custody.

19 Car. 2, c. 4, ss. 1, 2, 3, 5, so far as it relates to the providing stocks, for setting such prisoners to work, and to the removal of prisoners on occasion of sickness.

22 & 23 Car. 2, c. 20, ss. 10—13, as relates to prisoners being allowed to send for victuals and other necessities, and to fees and charities, and to the separation of felons and debtors.

2 Geo. 2, c. 22, as far as it relates to prisoners being allowed by keepers of prisons and gaols to send for victuals and other necessities, and to the taking of fees, and the making and hanging up tables thereof, and to inquiring concerning the same, and to the hearing of complaints of extortion against gaolers, and examining into gifts and legacies for the benefit of poor prisoners, and hanging up tables thereof.

14 Geo. 2, c. 33, so far as it relates to repairing, enlarging, and building houses of correction, and to buying houses and lands for that purpose.

16 Geo. 2, c. 31, so far as it relates to the escape of prisoners from any gaol or prison to which this act shall extend.

17 Geo. 2, c. 5, so far as it relates to the erecting, enlarging and managing of houses of correction, and the finding or turning out of masters of them for misbehaviour.

24 Geo. 2, c. 40, so far as it relates to the retailing of spirituous liquors in gaols, prisons or houses of correction, to the carrying of liquors into the same, to the search for such liquors, and to the hanging up of a copy of certain clauses of the said act in such gaols, prisons or houses.

32 Geo. 2, c. 28, so far as it relates to prisoners being allowed to send for victuals and other necessities and to the settling, signing, reviewing, enrolling and hanging up of tables of fees, rates and benefactions and rules for the government of gaols and prisons.

31 Geo. 3, c. 46, except only so much of the said act as relates to the imprisonment and employment in hard labour in the common gaol of the county, of prisoners sentenced to transpor-

tation, or to whom the royal mercy shall be extended on condition of transportation.

"Save and except so far as the said acts, or any of them, repeal any former act or acts, or any clause, matters, or thing therein."

As the statute of 4 Geo. 4, c. 64, contains no fewer than seventy-eight sections, and is in other respects very long, we shall content ourselves by giving a few only of its important enactments as regards gaolers.

Returns to be made at the several assizes by keepers of prisons of the persons sentenced to hard labour.

Sect. 19 states, "that the keeper of every gaol and house of correction, to which this Act shall extend, shall, previously to the first day of every assizes, great sessions or sessions of gaol delivery, make out a true and just return in writing of all persons in his custody who have been sentenced to hard labour by the Court at any previous assizes, great sessions or sessions of gaol delivery, specifying in such return the manner in which such sentences have been carried into execution, the particular species of labour in which such prisoners have been employed, and the average number of hours in a day for which such persons so sentenced have been kept to work; which return shall be signed by such keeper, and also by one, at least, of the visiting justices, who shall add thereto such observations as the case and circumstances may appear to him to require; and such return shall be delivered to the justice of assize and gaol delivery, and of great sessions, and shall be kept and filed by the proper officer amongst the records of the Court.

Filed as of record.

List of prisoners tried for felony to be transmitted to Secretary of State by the keeper of every prison.

"Sect. 20. And be it further enacted, that the keeper of every prison within England and Wales, having the custody of prisoners charged with felony, shall, *on the second day next after the termination of every session of the peace, session of oyer and terminer, or session of gaol delivery, great session or other session, held for the trial of prisoners being in such prison, whether such session shall be held under any commission, or by virtue of any charter or prescription, transmit by the post of that day to one of his Majesty's principal Secretaries of State, a calendar containing the names, the crimes and the sentences of every prisoner tried at such session, and distinguishing, with respect to all prisoners capitally convicted, such of them as may have been reprieved by the Court, and stating the day on which execution is to be done upon those who have not been reprieved; and that whenever the Court shall adjourn for any*

longer time than one week, the day upon which the adjournment shall be made shall be deemed the termination of the session within the meaning of this Act; and every keeper of any such prison, who shall neglect or refuse to transmit such calendar, or shall wilfully transmit a calendar containing any false or imperfect statement, shall for every such offence forfeit the sum of **Penalty 20l.** twenty pounds.

“Sect. 21. And, for the better ensuring the strict observance of the rules and regulations to be made for the government of the prisons to which this Act shall extend, be it enacted, that at each quarter sessions of the peace, the keeper of every prison within the jurisdiction of the Court holding such session shall and is hereby required to deliver or cause to be delivered to such Court, *a certificate, signed by himself*, which certificate shall contain a declaration how far the rules laid down for the government of his prison have been complied with, and shall point out any and every deviation therefrom which may have taken place; and if any keeper of a prison shall neglect to deliver, or cause to be delivered, such certificate as aforesaid, he shall forfeit for every such offence the sum of ten pounds. **Penalty 10l.**

“Sect. 22. And be it further enacted, *that one week before the Michaelmas session in every year*, the keeper of every prison to which this Act shall extend shall make up a return of the state of his prison for the year then ending, in the form contained in the schedule annexed to this Act, marked (B.), and shall deliver the same, or cause the same to be delivered, to the clerk of the peace or his deputy, for the use of the justices assembled at such quarter session. **Keeper to make return to clerk of the peace, &c. previous to Michaelmas sessions.**

“Sect. 27. And be it further enacted, that whenever the keeper or any other officer of any common gaol or other prison to which this Act shall extend, shall be removed from or resign his or her office, or shall depart this life, every keeper or other officer so removed or resigning, and his or her family, and the family of every such deceased keeper or other officer, shall forthwith quit the possession of the house or apartments in which he, she or they shall have previously resided by virtue of such office; and that if any keeper or other officer so removed or resigning, or any members of the family of any keeper or other officer so removed, resigning or departing this life, shall refuse or neglect to quit such possession for forty-eight hours after notice given to him, her or them, in writing, by the Under-sheriff, or other **When keeper, &c. shall be removed, resign or die, two justices may proceed as herein mentioned.**

officer appointed by the Sheriff, in case the house or apartments of which possession shall be required shall be in the common gaol, and by the clerk of the peace in case such house or apartments shall be in any house of correction, any two justices, upon proof made before them of such removal, resignation or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may, by *warrant under their hands and seals*, direct the Sheriff of the county, or other officer having the return of writs, to *eject such keeper, or the family of such keeper*, out of such house or apartments, and the Sheriff or such other officer shall accordingly clear the possession thereof in like manner as upon a writ of *habere facias possessionem*.

Power of
keeper to
inquire into
and punish
certain of-
fences.

“Sect. 41. And be it further enacted, that the keeper of every prison shall have power to *hear all complaints touching any of the following offences*: (that is to say), disobedience of any of the rules of the prison; assaults by one person confined in such prison upon another, when no dangerous wound or bruise is given; profane cursing and swearing; any indecent behaviour, and any irreverent behaviour at chapel, all of which are declared to be offences by this Act, if committed by any description of prisoners; absence from chapel without leave; idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this Act, if committed by any prisoner under charge or conviction of any crime; and the said keeper may examine any persons touching such offences, and may determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders *upon bread and water only, for any term not exceeding three days*.”

With regard to the classification, &c. of prisoners, the 5 Geo. 4, c. 85, s. 10, declares, “that in all such gaols, the male and female prisoners shall be confined in separate wards or parts of the gaol. The male prisoners shall be divided into five classes: first, debtors and persons committed for contempt of Court on civil process; second and third, prisoners convicted, who may be put into either of these classes, as to the visiting magistrates may seem meet, reference being had to the character and conduct of the prisoners, and the nature of their offence; fourth and fifth, prisoners committed for trial, who may also be put into either of these two classes, as to the visiting magistrates

may seem meet, reference being had in like manner to the character and conduct of the prisoners, and the nature of their offence.

“ *The female prisoners* shall be divided at least into *three* classes ; first, debtors and persons committed for contempt of Court on civil process ; second, prisoners convicted ; third, prisoners committed for trial.

“ In all such houses of correction the male and female prisoners shall also be confined in separate wards or parts of the house. *The male prisoners* shall be divided into *five* classes ; first and second, prisoners convicted, who may be put into either of such classes as to the visiting magistrates may seem meet, regard being had to the character and conduct of the prisoners, and the nature of their offence ; third and fourth, prisoners committed for trial, in all houses of correction where such prisoners are received ; such prisoners may be put into either of these classes as to the visiting magistrates may seem meet, regard being had, as already mentioned, to the character and conduct of the prisoner, and the nature of his offence ; fifth, vagrants.

“ In places where the gaol and house of correction are united, the male prisoners shall be divided into *six* classes at least ; first, debtors and prisoners committed for contempt of Court on civil process ; second and third, convicted prisoners ; fourth and fifth, those committed for trial ; such prisoners to be assigned to either of these classes of prisoners convicted or committed respectively as to the visiting magistrates shall seem meet, regard being always had to the character and conduct of the prisoners, and the nature of their offence ; sixth, vagrants.

“ The female prisoners, in each of such houses of correction, shall be divided into three classes : first and second, prisoners convicted ; the prisoners to be put into either of such classes as to the visiting magistrates shall seem meet, regard being had to their character and conduct, and the nature of their offence ; vagrants shall be assigned to one or the other of these classes as the visiting magistrates in their discretion may seem meet ; third, where females are committed to any house of correction before trial they shall be kept in a class by themselves (*h*).

“ Sect. 11. ‘ And whereas in some counties of Wales it may

(*h*) See also 4 Geo. 4, c. 64, for other regulations.

Regulations
herein men-
tioned may
be dispensed
with in
Welsh
counties.

be consistent with the due classification of the prisoners, to dispense with some of the wards or airing grounds required by the said recited Act and this Act;’ be it therefore further enacted, that if the Court of Quarter Sessions of *any county in Wales* shall, during the present year, present a petition to the lords of his Majesty’s privy council setting forth the whole number of prisoners imprisoned in the common gaol and house or houses of correction of such county, within the last seven years, with the causes of their imprisonment respectively, so as to exhibit in which of the classes prescribed by the said recited Act, or this Act, each such prisoner would have been included, and showing also the greatest number of such prisoners imprisoned in such gaol and house or houses of correction, at any one time in each of the said seven years; and setting forth fully and particularly the then state of such gaol and house or houses of correction, and an estimate of the expense, which would be incurred by enlarging such gaol, or such house of correction to which the petition shall apply, so as to admit of the whole number of wards and airing grounds required by the said Act or this Act, and the amount of the county rate for each of the said seven years, and praying a dispensation with some part of the wards or other accommodations required by the said Act or this Act, which under the circumstances of such county may to such Court appear unnecessary, it shall be lawful for the said lords of the privy council to take such petition into their consideration, and, if they shall see fit, to make an order thereon, directing in what manner and to what extent it shall be sufficient for such county to comply with the provisions of the said Act and this Act, and making such regulations touching the same as to them shall seem meet; and such county duly complying with such order, shall not be liable to be indicted, or otherwise impeached, for not further conforming itself to the regulations of the said Act and this Act, in regard to the extent of its prisons, or the wards into which they are divided, or the accommodation to be found therein; any thing in the said recited Act or this Act to the contrary notwithstanding.

Proviso re-
specting
prisoners
for breach
of revenue
laws.

“Sect. 12. And be it further enacted, that any person confined in any prison to which the said recited Act extends, for nonpayment of any penalties incurred under the revenue laws, may be assigned to such class of convicted prisoners for whom a separate ward is therein provided, as the visiting magistrates in

their discretion may think fit, regard being had to the character of the prisoner, and his or her conduct while in prison ; and the reasons for assigning such prisoner to any particular class of convicts shall be reported by the visiting magistrates to the quarter sessions.

“ Sect. 13. And be it further enacted, that where in any prison there shall be only one prisoner belonging to any class in the said Act or herein specified, such prisoner may be assigned, with his or her own consent, to any other class of prisoners of the same sex, which the visiting magistrates in their discretion shall think fit. To prevent solitary confinement.

“ Sect. 16. ‘ And whereas by the said recited Act it was made lawful for one or more visiting justice or justices of any prison to which the same extended, to authorize, by an order in writing, the employment of prisoners committed for trial, with their own consent, in any such work as therein specified ;’ be it hereby enacted and declared, that such consent of every such prisoner shall be freely given, and shall not be extorted or obtained by deprivation or threat of deprivation of any prison or other allowance ; *and that no prisoner before conviction shall, under any pretence, be employed on the tread wheel, either with or without his consent.* 4 Geo. 4, c. 64, s. 37.

No prisoner employed on tread wheel before conviction.

“ Sect. 17. ‘ And whereas it has been doubted whether prisoners committed to prison for trial, who are unable to maintain themselves otherwise than by being employed in some kind of work or labour in prison, are entitled to receive any prison allowance of food without being required so to employ themselves ;’ be it hereby enacted and declared, *that such prisoners shall be allowed such food as may be sufficient for the support of health, without being obliged to perform any kind of work or labour as the condition of such allowance ;* and that any wages or portion of the same, which may become due to such prisoners from the keeper of any prison, in consequence of any order made by any visiting justice or justices of such prison, for the employment of such prisoners with their own consent, shall be paid to them as directed by such order, in addition to the food so allowed, and without any diminution of such allowance by reason of such payment” (i). As to prisoners being allowed food without being obliged to work.

(i) Gaolers cannot take obligations from their prisoners for meat, drink or enlargement, 10 Co. 100 b ; Plowd. 68 ; 9 Co. 87 b ; 2 B. & Cr. 291.

Gaols for safe custody not punishment except on criminal side.

Irons how and when to be used.

Death in consequence of ill treatment.

Gaoler's duties in case of death of a prisoner.

Gaols are for safe custody and not for punishment (unless on the criminal side), and therefore prisoners are not to be subjected to other hardships than what "urgent and absolute necessity" demands for that end. As to the *use of irons*, be it observed, that they are never to be resorted to, except in case of "*urgent and absolute necessity*," and not to be continued under any circumstances longer than *four days* without an order in writing from a visiting justice; and this is declaratory of the common law "*custodes poenam sibi commissorum non augeant, nec eos torqueant; sed omni sævitia remota, pietateque adhibita, judicia debita exequantur.*" Fleta, l. 1, c. 26; 2 Inst. 38; 3 Inst. 34; Britton, c. 11, s. 5; H. H. P. C. 601. And if a prisoner's death be owing to cruel and oppressive usage on the part of the gaoler or any of his officers it is *wilful murder* in the party guilty. In the case of *Castell v. Bainbridge et Corbet*, 2 Str. Rep. 854, Raymond, C. J., directed the jury thus, "if they believed Castell (*the deceased*) was carried to Corbet's against his consent, and was so detained, that Bainbridge and Corbet *knew the small pox was there*, that Castell had not had it but feared it, and desired to be removed, or not to be carried there at all, that he caught the small pox of *White* and died thereof, then the appellers (Bainbridge et Corbet) would be guilty of murder; but if any of these facts were not proved to the satisfaction of the jury they ought to be acquitted." Fort. 322; 17 How. St. Tr. 398; 1 East's P. C. 331. Another instance occurred in *R. v. Huggins*, 2 Ld. Raym. Rep. 1574, where the gaoler's servant confined a prisoner, against his will, in a room unfit to live in from dampness, stench, &c., which caused his death; it was holden wilful murder in the *servant*. 17 How. St. Tr. 298; 1 Russ. 668.

Upon the death of a prisoner, notice thereof shall be given by the keeper forthwith to one of the visiting justices as well as to the coroner of the district, and to the nearest relation of the deceased when practicable.

By a recent statute (*j*), it is enacted, "that every offender who shall be so removed to Parkhurst prison shall continue there until he or she shall be transported according to law, or shall become entitled to his or her liberty, or until the Secretary of State shall direct the removal of such offender to the gaol,

prison, or place from which he or she shall have been brought, or in which he or she may be lawfully confined ; and the Sheriff, gaoler, or other person having the custody of any offender, whose removal to Parkhurst prison shall be ordered in manner aforesaid, shall, with all convenient speed after the receipt of any such order, convey or cause to be conveyed every such offender to Parkhurst prison, and shall there deliver him or her to the governor of the prison with a true copy, attested by such Sheriff or gaoler, of the caption and order of the Court by which such offender was sentenced, containing the sentence of every such offender by virtue whereof he or she shall be in the custody of such Sheriff or gaoler, and also a certificate specifying such particulars within the knowledge of the Sheriff or gaoler concerning such offender as may be from time to time directed by the Secretary of State ; and the governor shall give a receipt in writing to the Sheriff or gaoler for his discharge ; and all reasonable expenses which the Sheriff or gaoler shall incur in every such removal, shall be paid by the county, riding, division, city, borough, liberty, or place, for which the Court in which the offender was convicted shall have been holden."

SECTION IX.

DEPUTIES.

By the Law Amendment Act^(a) " the Sheriff of each county in England and Wales^(b) shall severally name a *sufficient deputy*, who shall be resident or have an office within one mile from the *Inner Temple Hall*, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting of all rules and orders to be made on or touching the execution of any process or writ to be directed to such Sheriff."

It will be observed, that no mention is made of the *time* or *form* of naming a deputy for such purposes, a *reasonable time* will therefore be allowed the Sheriff for that purpose ; but for any laches in that behalf he would be liable in damages to the party aggrieved thereby, as if an arrest was lost by such non-appointment or the like : the *form* of nomination may be as follows :—

(a) 3 & 4 Will. 4, c. 42, s. 20.

(b) As to the counties in Wales, Lancaster, Chester, and City of Chester, 1 Edw. 6, c. 10 ; 5 Edw. 6, c. 26 ;

Durham, 31 Eliz. c. 9 ; and the Rules of the different Courts at Westminster to enforce them ; Tidd's New Practice, p. 126.

*Appointment.*Deputy's
appoint-
ment.

Cumberland } *J. D. Esq.*, High Sheriff of the county (or county palatine) aforesaid, to *M. A.*, gentleman. I do hereby nominate, constitute, and appoint you to be my deputy, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting of all rules and orders to be made on or touching the execution of any process or writ to me as such Sheriff.

Given under the seal of my office, this day of , A. D. 1838.
By the same Sheriff.

SECTION X.

REPLEVIN CLERKS.

Replevin
Clerks.

By statute 1 & 2 Phil. & Mary, c. 12, s. 3, "for the more speedy delivery of cattle taken by way of distress, it is enacted, that every sheriff of shires, being no cities nor towns made shires, shall, *at his first county day or within two months* next after he hath received his patent of the office of sheriffwick (his warrant of appointment), depute, appoint, and proclaim in the shire town within his bailiwick *four (a)* deputies at the least, dwelling not above twelve miles one distant from another; which said deputies so appointed and proclaimed shall have authority in the Sheriff's name to make replevies and deliverance of such distresses, in such manner and form as the Sheriff may and ought to do; upon pain that every Sheriff for every month that he shall lack such deputy or deputies shall forfeit for every such offence *5*l.**," recoverable in a *qui tam* action of debt, or, &c.

There must be an *appointment* to satisfy the statute, and the mere acting as replevin clerk will not suffice *(b)*; but the appointment is not unfrequently made by a simple minute in the Court Book at the first county court day: it is, however, advisable for many reasons to grant them their respective deputations according to the following precedent:—

Cumberland } *J. D., Esq.*, Sheriff of the county (or county palatine) to wit. } aforesaid, to *M. A.*, gentleman. I do hereby nominate, constitute, and appoint you one of my deputies for making or granting replevins within the said county, pursuant to the statute in that case made and provided.

Given under the seal of my office, this day of , A. D. 1838.
By the same Sheriff.

The following advertisement is usually inserted in the Newspapers generally circulated in the county:

(a) More are in general appointed and for the most part attorneys.

(b) *Griffiths v. Stephens*, 1 Chit. Rep. 196.

Cumberland } The places and times appointed for holding the several
to wit. } County Courts of J. D., Esq., Sheriff of the said County.
1838.

1. Court House, Carlisle February 15.
2. County Court Office, Penrith March 15.
3. Court House, Carlisle April 12.
4. Queen's Head, Wigton May 10.
5. Court House, Carlisle June 7.
6. County Court Office, Penrith July 5.
7. Court House, Carlisle August 2.
8. Court House, Carlisle August 30.
9. Queen's Head, Wigton September 27.
10. County Court Office, Penrith October 25.
11. Court House, Carlisle November 22.
12. Court House, Carlisle December 20.

1839.

13. Court House, Carlisle January 17.

REPLEVINS GRANTED BY

Mr. N., Under-sheriff	Carlisle.
Mr. B.	Penrith.
Messrs. S.	Cockermouth.
Mr. P.	Whitehaven.

SECTION IX.

COUNTY CLERK.

The County Clerk is the Clerk of the County Court and also appointed by the Sheriff^(a), when such appointment does take place; but it is quite optional on his part to appoint one or not. The appointment when made is in general made by a minute in the Court Book.

If the Under-sheriff resides at a distance from the place of holding the Court, the Sheriff should depute some attorney at the place to do so.

(a) Milton's Ca. 4 Co. 33.

CHAPTER II.

COURTS.



Judicial
duties.

SEEMING the High Sheriff now legally invested with the purple of his office and surrounded by his officers, equally in a situation to discharge their respective duties, we purpose examining his *judicial* character and the jurisdiction of the Courts over which he is called *virtute officii* to preside as judge.



SECTION I.

SHERIFF'S TOURN.

Sheriff's
Tourn.

As this Court (although for a period of nearly three centuries and an half, surviving in the meanwhile the rash hands of invading foreigners, constituting the chief criminal Court of the kingdom) is now but the shadow of what it was, its business having wholly devolved upon the Court of Quarter Sessions, its present jurisdiction may be briefly laid down thus :—The Sheriff may now *virtute officii* receive indictments and presentments of all felonies that are *felonies at common law*, and all common nuisances, *in order to deliver them to the justices of the peace* at the next sessions ; his power to *determine* being taken away by the 17th section of the Magna Charta (a).

Jurisdiction
of.

A Court of
record.

It is a Court of record and its style is “ *Curia visus franci plegii dominæ reginæ tenta apud C. coram vic. in turno suo tali die,*” &c. and holden according to the statute of 31 Edw. 3, c. 15.



SECTION II.

COUNTY COURT.

County
Court.

What has been said of the “ Sheriff's Tourn ” as respects its former jurisdiction, the effect of the Norman invasion upon it as

(a) As to time, place, jurisdiction, 192, 66; 2 Saund. 290; 12 Mod. requisites of indictments, &c., 2 Hawk. 180; 8 Co. 38; *Colebrook v. Elliott*, P. C. ch. 10; 2 Hale's P. C. 70; 3 Burr. 1860. Dalt. 285; Dyer, 151, 211; Keilw.

a tribunal of justice, and the final abridgment of its powers by the great charter, with equal truth apply to the County Court; both Courts seem originally to have had jurisdiction over criminal as well as over civil matters (*b*): but certain it is that this Court in practice was confined to civil pleas: the reason usually assigned by our legal antiquaries is, that the bishop was judge therein together with the sheriff, and by the common law he was not to intermeddle in matters of blood: and pleas of the crown are at the present day as unknown in it as if they had never formed a component part of its business, being confined to civil disputes between subject and subject of a *limited extent*, exercising in general a jurisdiction concurrent with but sometimes exclusive of that of the superior Courts (*c*). Present jurisdiction.

The Sheriff's duties in this Court are in general of a ministerial (*d*) and not of a judicial nature—being there, to use the language of Lord Coke, "*edocere jura populo*," his work being directory or declaratory—the mere register of the suitors or freeholders who are the real judges therein; yet as some of his acts herein are judicial and protected as such; for instance, in issuing his *fi. fa.* (*e*); for that reason, and for order's sake the subject is now considered. Sheriff's duties in this Court.

The Court is not a Court of record (*f*); its style is, "*Cum-berland to wit, the (1st) County Court of M. A., Esq., Sheriff of the county aforesaid, held at C.*," and holds plea either by plaintiff or by writ of justices, which is in nature of a commission out of Chancery to the Sheriff, empowering him to hold plea in any personal action (not being *vi et armis*) to any amount (*g*). Not a Court of record.
Jurisdiction by plaintiff and justices.

The Court has jurisdiction *by plaintiff* in all personal actions (not being *vi et armis*) under the value of 40*s.* (*h*), except in account (*i*); debt on record in other Courts; specialties; detinue of charters concerning freehold or inheritance; and in pleas concerning freehold; (Comyn, in his Digest, adds to the exception, By plaintiff.
In what form of action.

(*b*) Glanv. l. 1, c. 2, 3, 4; Fleta, lib. 2, c. 62; Bracton and Britton, *passim*.

(*c*) Statute of Gloucester, 6 Edw. 1, c. 8; 3 Bl. Comm. 35.

(*d*) 4 Rep. 32; 6 Rep. 11; Dalt. 409.

(*e*) *Tinsley v. Nassau*, 2 Car. & P. 582; M. & M. 52.

(*f*) 8 Co. 41, c. 60.

(*g*) Finch. 318; Fitz. Nat. Br. 152; 4 Inst. 266.

(*h*) 2 Inst. 312; 4 Inst. 266.

(*i*) 2 Inst. 380; Com. Dig. (County C. 8.)

mayhem, deceit, or maintenance, or the forging of a false deed ;) but not above 40s. *except in replevin*.

To what amount.

It should be observed, that although the County Court may have jurisdiction in a cause, yet if freehold be pleaded the Court is ousted of its jurisdiction, as if one in replevin avows as in the freehold of *B.* the jurisdiction of the County Court is gone (*k*).

When Court has no jurisdiction, how to take advantage of it.

That the debt does not "*attingat vel excedat summam 40s.*" must appear affirmatively by the declaration, otherwise the proceedings will be erroneous (*l*) ; should it appear in the count that full 40s. is claimed, the defendant may take advantage of it either by plea during the sitting or by prohibition out of Chancery ; if the debt was originally more than 40s. and the plaintiff by his declaration acknowledges the receipt of so much as reduces the debt under that sum, the Court has jurisdiction even in trespass (*if it be not vi et armis*), as of battery (*m*), or in replevin (*n*) ; but he cannot falsely acknowledge satisfaction of part, to reduce the debt under 40s. (*o*), nor can an entirety be split, so as to make several complaints (*p*).

Splitting demand.

Jurisdiction by justices.

The justices (as before observed) is in nature of a commission out of Chancery to the Sheriff, empowering him to hold plea in any personal action (not being *vi et armis* (*q*)) to any amount ; it is of two kinds.

1. To have the plea holden before the Sheriff.

2. To have the plea holden before the Sheriff and the Coroner.

In *Milton's case* (*r*) it was said in argument, that the commission being directed to the Sheriff, and not to the freeholders or suitors, changed the nature of the Court, and made the High Sheriff *pro hac vice* judge thereof, but the Court decided otherwise. By justices the Court has jurisdiction in all personal actions (*not being vi et armis*), even though the freehold come in question (*s*) ; also in the real action of *dower* (*t*) ;

In what form of action.

(*k*) 3 Lev. 196, 203.

(*l*) Com. Dig. (County, C. 8) ; 2 Inst. 380 ; 2 Mod. 206.

(*m*) 2 Inst. 312.

(*n*) 2 Inst. 189 ; 52 Hen. 3. c. 21.

(*o*) Com. Dig. (County, C. 8) ; Palm. 564.

(*p*) 2 Inst. 312.

(*q*) The reason why the County Court cannot hold plea in trespass *vi et armis* is, that in such action a fine is due to the Queen, and the Court

not being a Court of record cannot impose one ; and *semble*, the reason equally applies to proceedings by justices as well as by plaint ; Dalt. 423, but see Com. Dig. (County, C. 5.)

(*r*) 4 Rep. 33.

(*s*) Finch. 320 ; Bro. (Jurisd.) 98 ; 14 Hen. 8, 15 ; 4 Inst. 266 ; 1 Lev. 253.

(*t*) Bract. lib. 4 ; Dalt. 421 ; Com. Dig. (County, C. 5.)

several causes of action may be included in the same writ—it is not returnable; if the Sheriff do not proceed thereon, an *alias* and *pluries* may issue; and if he does not execute them, an attachment will be granted against him (u). Writ not returnable.

Warrant upon a Justicies.

C. (to wit). A. B. esq., Sheriff of the county aforesaid, to G. A. my bailiff, greeting. By virtue of her Majesty's writ of justicies to me directed and delivered, I command you that you summon E. F. personally to be and appear at my next County Court, to be holden at C. on Thursday next, the day of instant, to answer C. D. in an action on promises [or "in debt"], as is alleged, and have you there this precept. Given under the seal of my office, this day of , &c.
[Seal of office.] By the Sheriff.

Summons upon the above Warrant.

By virtue of her Majesty's writ of justicies to the Sheriff of the county of C. directed and delivered, and by virtue of the said Sheriff's precept to me directed, I do hereby summon you, that you be and appear personally before the said Sheriff at his usual County Court, to be holden at C. on Thursday the day of instant, to answer C. D. in an action on promises, as is alleged. Dated this day of , 18 .
To E. F., (the defendant.) G. A.

By statutes 9 Hen. 3, c. 35, and 2 Edw. 6, c. 25, as regards *England*, and as regards *Wales* by the 34 Hen. 8, c. 26, s. 73, and *Chester*, by 33 Hen. 8, c. 13, not more than one *lunar* month must intervene between Court and Court (x); and by the 7 & 8 Will. 3, c. 25, it is enacted, "that all County Courts held for the county of York, or any other County Courts which heretofore used to be held on a *Monday*, shall be called and begun upon a *Wednesday*, and not otherwise, any custom or usage to the contrary notwithstanding; but it may be holden by *adjournment* on a *Monday* (y); it must be holden on a *day certain*, because of the writs of *exigent*, which are to be proclaimed and read there (z). Time of holding Court.

The Coroners are to sit with the Sheriff at every County Court to give judgment in outlawry (a). In *London* the judgment upon outlawries is given by the Recorder in the Court of Hustings (b).

(u) Dalt. 421; Fitz. N. Br. 125, e.
(x) Vide 2 Inst. 71, as to the validity of a prescription for a longer interval, ante, p. 66.

(y) 18 Geo. 2, c. 18, s. 11, repealing 6 Geo. 2, c. 23, s. 1, see post,

day of holding Court for elections of knights of the shire.

(z) Impey, 254.

(a) Dyer, 223; Finch, 116.

(b) Co. Litt. 288 b.

Place of holding at common law.

By the common law the Court may be holden at any place within the county; but by statute law it must be holden at particular places and at none other :—

By particular statutes.

In England.

Northumberland, in the town or Castle of Alnwick (c).

Sussex, at Chichester and Lewes alternately (d).

Cheshire, in the shire hall of the said county (e).

Monmouthshire, at Monmouth and Newport alternately (f).

In Wales.

Brecknockshire, at Brecknock.

Radnorshire, at New Radnor and Preston.

Montgomeryshire, at Montgomery and Maghenleth.

Denbighshire, at Wrexham (g).

Cause of action must arise within the county.

To give this Court jurisdiction, whether in suit by plaintiff or justicies, the cause of action must arise within the county, and it must be distinctly alleged and proved that not only the promise, but the cause of action itself, arose within the jurisdiction of the Court; but if the cause of action arose within the jurisdiction of the Court, any matter merely in aggravation of damages is triable there, although arising elsewhere (h); and the defendant must reside within the jurisdiction of the Court, but the plaintiff need not (i).

Defendant must reside within its jurisdiction.

Plaintiff and defendant may sue or defend by attorney (k).

Different process.

The process is by summons, attachment, and distringas ad infinitum; or by attachment and distress, (as in trespass,) which run in the name of the High Sheriff directed to his bailiffs (l);

How issued, &c.

the summons is in general first issued out by the plaintiff or his attorney, two or three days before the Court day (m), directed

(c) 2 Edw. 6, c. 25.

(d) 19 Hen. 7, c. 24; Dyer, 135.

(e) 33 Hen. 8, c. 13.

(f) 27 Hen. 8, c. 26.

(g) *Ibid.*

(h) *Peacock v. Bell*, 1 Saund. 74 a;

Dunn v. Crump, 3 B. & B. 309.

(i) *Prichard v. Maggill*, 5 Dowl. 731.

(k) *Westm.* 2, c. 10; 6 Edw. 1,

c. 8; 20 Hen. 3, c. 10; 12 Geo. 2, c. 13, s. 7; for business done in this Court a signed bill must be delivered according to 2 Geo. 2, c. 23, s. 23; *Becke v. Wells*, 3 Tyr. 193; *Wardle v. Nicholson*, 4 B. & Ad. 469.

(l) 3 Lev. 203; Lut. 1413.

(m) 4 Inst. 266; but this will depend upon custom.

to a bound-bailiff, not to a special-bailiff⁽ⁿ⁾, to summon or warn the defendant (o), and made returnable the next County Court.

If defendant does not appear thereupon, an attachment issues, and if defendant does not appear on attachment a distringas shall go, by which the bailiff should take and detain, but not sell, goods of the defendant of the value of 40s. until the defendant does appear; and in default of appearance at next County Court, according to the exigency of the writ, the goods so taken and detained are forfeited^(p), and so distress infinite until his appearance in Court. If the defendant hath no goods the plaintiff is without remedy in this Court, for no *capias* lies therein, but an action may be brought at common law upon the judgment entered^(q).

Default of appearance.

THE PLAINT, which is the first proceeding in the suit, must be entered in writing *sedente curia*; if defendant appears, and by attorney, the plaintiff must also enter appearance by attorney, and enter or file his declaration in writing (engrossed on parchment), giving a rule to plead, usually an eight day rule. The plaintiff may be ruled to declare, usually a fourteen day rule, and on default the plaintiff is nonsuited, costs taxed by the Sheriff, and recovered as in other cases. As to the entry of proceedings, rules, &c. but general observations can be made, for they necessarily depend upon the practice of each particular Court^(r).

Appearance and pleadings, &c.

The defendant may by leave of the Court *imparl*, that is, obtain leave to plead at a future Court, at which Court he is to enter his plea; for although imparlances are abolished as regards Courts of record, by the pleading rules of Hil. Term, 4 Will. 4, yet they must still be entered in Courts not of record, as in the one now under consideration; they are always granted as of course.

Imparlances not abolished in this Court.

The defendant cannot plead several matters, the statute of 4 & 5 Anne, c. 16, applying only to Courts of record, but it should also be observed, that the pleading rules of Hilary Term, 4 Will. 4, do not affect the general issue as in Courts of record,

Several pleas not allowed.

Extent of general issue.

(n) Lut. 1413.

(o) Com. Dig. (County, C. 9.)

(p) Com. Dig. (Process, D. 6.)

(q) Com. Dig. (County, C. 9); Finch. 318; Greenwood on Courts, 22.

(r) See *Overton v. Swettenham*, 5 Dowl. 641, as to entry of proceedings.

Freehold
pleaded by
justices.

consequently, although a defendant cannot plead double, which is in many cases a great hardship, he may by the general issue put the plaintiff on proof of his whole declaration in the first instance. It has been before stated, that if a defendant in a suit by plaint pleads freehold the Court is ousted of its jurisdiction and cannot proceed; but if the suit be by justices the Court may proceed; if issue be not joined at the next County Court the plaintiff is to file his replication or demurrer; if the plaintiff reply then the defendant is to rejoin at the next Court, or he may be ruled for that purpose on peril of neglect, and so forth (s).

Jury.

When issue is joined a jury is summoned (*if by justices*), also in a suit by plaint the trial (by prescription) may be by jury, otherwise by examination of witnesses.

A County Court Subpœna.

C. (to wit.) A. B. esq., Sheriff of the county aforesaid, to T. D. and W. B., greeting. I command you, and each of you (all excuses whatsoever being laid aside), that you and every of you be and personally appear at my next County Court, to be held at A., on Thursday, the day of next, to testify the truth, according to your knowledge, in a certain action there depending between E. F. plaintiff, and C. D. defendant, in an action on promises, and this you omit not at your peril. Given under my seal of office this, &c. By the Sheriff.

County Court Execution.

C. (to wit.) A. B. esq., Sheriff of the county aforesaid, to T. D. my bailiff, greeting. You are hereby commanded to levy on the goods and chattels of C. D., within my said county, the sum of £ , which E. F. in my County Court recovered against the said C. D. for damages which the said E. F. sustained by occasion of not performing certain promises to the said E. F. by the said C. D., at A., in my county, whereof he is convicted, and have you the said sum at my next County Court, to be holden in and for my said county, to render to the said E. F. for damages aforesaid. Dated the day of , in the year of our Lord 18 .

[Seal of office.]

By the Sheriff.

Writ of execution.

When the trial is over and verdict for the plaintiff he may issue out a fi. fa., but not a ca. sa., except in Wales (t); or he may have a *levari facias* against the goods and chattels, but not of the lands and chattels. If the Sheriff delays execution, a writ *de executione judicii* may be directed to him out of Chan-

(s) Com. Dig. (County, C.)

(t) 34 Hen. 8, c. 26.

cery to do execution, and thereupon an *alias* and *pluries*, and attachment against the Sheriff.

In every case where the plaintiff may have his costs against the defendant, the defendant shall have his costs (u).

Whenever a sci. fa. is requisite in the superior Courts it is Sci. fa. requisite here; an action may be brought upon this judgment in the superior Courts though the verdict be under 40s. (v)

Before judgment. Where the suit is by

Writ,	} it is removed by {	Pone,	Removal of proceed- ings.
Plaint without writ,		Re. fa. lo.	

All these are original writs issuing out of Chancery; as the forms of the writs, returns, &c. are the same in replevin as here, they are inserted under that title.

After judgment it is removed by a writ of false judgment.

The Court will compel a Sheriff to complete his entries of proceedings in a County Court and certify its practice, where on his return to a writ of false judgment only minutes of them have been transmitted (x). The delivery of a re. fa. lo. after interlocutory and before final judgment, is a stop to all further proceedings in that Court, and the officer cannot refuse paying obedience to it under pretence of his fees not being paid to him, *quia parere necesse est*, and as regards his fees he has a proper remedy (y).

Where the record is removed, and the party declares *in banco*, the plaint is determined, hence no advantage can be taken of a variance between the plaint and the declaration in the superior Court (z). When
plaint is de-
termined.

There are two kinds of proceedings peculiar to the County Court, namely, *Replevin* and *Outlawry*.

(u) 23 Hen. 8, c. 5.	(y) <i>Bevan v. Prothesk</i> , 2 Burr.
(v) Cro. Eliz. 96; Greenw. 22.	1152.
(z) <i>Overton v. Swettenham</i> , 5 Dowl.	(*) <i>Hargreave v. Arden</i> , Cro. Eliz.
641; but the original minute of the proceeding need not be returned, 3 B. & Cr. 453.	543.

SECTION III.

REPLEVIN BY PLAINT (a).

Replevin. This remedy has now for so long a period of time, in this part of the United Kingdom (b) at least, been resorted to for the purpose of deciding the legality of a distress, that it may be said to be in effect confined to a taking by distress; but not universally so, as laid down by Sir W. Blackstone, for many authorities may be found in the books of replevin having been brought when there was no distress (c). In 1 Inst. 145 b, it is said, that replevin may be brought in any case where a man has had his goods taken from him by another: being so, it is somewhat strange that it is not more generally resorted to as a remedy for the recovery of a specific chattel; it is quite clear that it is the only remedy in which a chattel can be recovered *in specie*, trover and detinue both sounding in damages. And in *Evans v. Elliott* (d) it was holden, that it would lie for a mere wrongful detention.

Replevin not confined to a taking of distress.

A mere wrongful detention.

Extends to all goods and chattels. Although the statute of Marlbridge (e) makes use of the term "*averia*" or "*beasts*," the statute has received a more enlarged construction and has been extended to *all goods and chattels*, and not confined to "*beasts*" (f). Tenant's fixtures (g); all animals *feræ naturæ*, reclaimed or not reclaimed, if they are the subject-matter of merchandize and valuable (h); the young of animals born after the distress (i); "so sheaves or cocks of corn, or corn loose or in the straw, or hay, lying or being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land or ground charged with rent" (k); *so when taken as a distress for arrears of rent* "any cattle or stock of their (lessor's) respective tenant or tenants feeding or depasturing upon any common appendant or appurtenant, or any ways belonging to all or any part of the premises demised, all sorts

(a) The action of replevin by writ is now obsolete.

(b) In Ireland not so confined, *Shannon v. Shannon*, 1 Sch. & Lefr. 327.

(c) *Rex v. Monkhouse*, Str. 1184; *Rex v. Oliver*, Bunb. 14; *Pearson v. Roberts*, Willes Rep. 672, cited in Selw. N. P. 1184, 8th edit.; 1 Sch. & Lefr. *suprà*.

(d) 5 Ad. & Ellis, 146.

(e) 52 Hen. 3, c. 21.

(f) 1 Inst. 145 b.

(g) 3 Cowp. 414; *vide post*, as to things affixed to the freehold.

(h) Cro. Jac. 362, 463.

(i) Sid. 82.

(k) 2 W. & M. c. 5, s. 3.

of corn and grass, hops, roots, fruits, pulse or other produce whatsoever which shall be growing on any part of the estate so demised," are repleviable (*l*).

All chattels are distrainable *damage feasant* (*m*) and repleviable.

As goods and chattels only are repleviable, it follows that things affixed to the freehold (*n*) (*except tenant's fixtures as before observed*) are not repleviable, nor are goods taken by virtue of a statute which authorizes a distress and sale repleviable (*o*), unless the statute *by implication* authorizes a replevy (*p*); for it is more in nature of an execution than a common law distress: *note* however, if a magistrate in such a case *exceed* the special jurisdiction given him by statute, the goods seized under his warrant are not in contemplation of law taken in execution and are repleviable (*q*). When a statute provides that the judgment of commissioners (*r*) shall be final, their decision is conclusive and cannot be called in question in any collateral way; therefore, goods seized upon their decision are not repleviable (*s*): goods distrained under a conviction for deer stealing (*t*), and goods seized for duties due to the crown, are not repleviable (*u*): goods taken upon an execution awarded from a superior Court are not repleviable, but if awarded from an inferior Court it is said they are so (*x*). The Court will not, it seems, on motion to set aside proceedings, enter into the question whether replevin will lie or not (*y*).

Damage feasant.

When goods are not repleviable.

There are two kinds of property; a *general* property, which every absolute owner has; and a *special* property, as of goods pledged or taken to manure a man's lands or the like, and of both these a replevin lies (*z*): that is, if vested in him at the time of the taking—a mere possessory right is not sufficient (*a*).

Parties to have replevy.

(*l*) 11 Geo. 2, c. 19, s. 18.

(*m*) Gilb. 45; Sid. 440.

(*n*) Gilb. 170; *Niblet v. Smith*, 4 Term Rep. 504.

(*o*) *Hutchins v. Chambers*, 1 Burr. 588; *Wilson v. Wilson*, 1 Brod. & Bing. 57.

(*p*) *Fletcher v. Wilkins*, 6 East, 287; *Milward v. Caffin*, 2 Bl. Rep. 1330; *Hurrell v. Wink*, 8 Taunt. 369; and see 1 Swanst. 304.

(*q*) *Milward v. Caffin*, 2 W. Bl. 1330; *Nichols v. Walker*, Cro. Car.; *Rez v. Newcombe*, 4 Term Rep. 368; 7 Term Rep. 273; 2 Term Rep. 372; 6 Term Rep. 629; *Rez v. Canterbury*,

1 W. Bl. 667; *Radnor v. Reeves*, 2 Bos. & Pul. 392.

(*r*) A decree of commissioners of sewers is *not* conclusive, 5 Moore, 608; 2 Brod. & B. 691; 3 M. & S. 450; 2 T. R. 358.

(*s*) 1 Swanst. 304, *suprà*.

(*t*) *Rez v. Monkhouse*, Str. 1184. And see *Wilson v. Waller*, 1 B. & B. 57.

(*u*) *Rez v. Oliver*, Bunb. 14.

(*x*) Gilb. 167; Willes, 672 a.

(*y*) *Pritchard v. Stephens*, 6 T. R. 522; see also 2 N. R. 392.

(*z*) 1 Inst. 145 b.

(*a*) *Templeman v. Case*, 10 Mod. 25.

Executors. Executors may have replevin of the goods of their testator taken in his life time (b); parties who have a joint interest in the distress may join in the replevin(c); but when the interest is several there must be several replevins(d). If the goods of a *feme sole* are taken and she marries, the wife may join, or the husband alone may have replevin(e); if the goods are taken after marriage the wife cannot join in the replevin(f): whether wife can be joined with husband for a taking by them after marriage seems doubtful(g).

Against whom the action may be brought. The action of replevin may be brought against the bailiff who makes, or against the landlord who authorizes, the distress, or against both.

Time and place. If the distress be taken in one county and carried into another, the plaintiff may have replevin in either; for the law considers the distress as wrongfully taken in every place in which the defendant may have it in his custody(h). Neither the removal of a distress for rent from the demised premises after the five days, nor an appraisement of the distress, takes away the tenant's right to replevy(i). At common law too no time is limited for replevying, because the distrainer cannot sell the distress.

By whom granted. None but the High Sheriff, Under-sheriff, or Replevin Clerks duly appointed, can grant replevy; a criminal information may be filed against one who usurps the office(k): or it is good ground for a prohibition to the Sheriff to restrain him from proceeding in the replevin suits(l).

How made. When a party intends to replevy he gives the name of two sureties to the Sheriff's officer, who (after satisfying himself as to their *sufficiency* (m)) will give him a certificate to the Sheriff

(b) Bro. Repl. pl. 59.

(c) 1 Inst. 145 b.

(d) Bro. Repl. pl. 12.

(e) F. N. B. 69 k; Ca. Temp. Hardw. 119.

(f) *Ibid.*

(g) See *Kegworth v. Hill*, 3 B. & Ald. 685; *Vine v. Sanders*, 6 Dowl. 233, and cases cited.

(h) F. N. B. 69; 1 Doct. Plac. 315; Bro. Repl. pl. 63.

(i) *Jacob v. King*, 5 Taunt. 451; 1 Marsh. 135; 1 Ch. Rep. 196.

(k) *Trevanion's case*, 11 Mod. 42.

(l) *Brandon v. Hubbard*, 4 Moore, 367.

(m) As to the legal meaning of this term, see "*Action for taking insufficient Pledges.*"

to that effect: this certificate is taken to the Sheriff's office, or to that of his deputy, when the *replevin bond* is filled up and executed by the party replevying and his two sureties, and the warrant to replevy granted.

The Sheriff thereupon makes out to his bailiff his

Warrant to Replevy.

W. to wit: G. H. esq. sheriff of the county of _____, to _____ and _____, my bailiffs, and to every of them, jointly and severally, greeting: Whereas A. B. hath found me sufficient security, as well for prosecuting his suit with effect against C. D. for taking and unjustly detaining his cattle, goods and chattels, to wit, [*&c. set out the cattle and goods,*] which the said C. D. hath taken and unjustly detains, as it is said, as also for making return thereof, if return thereof shall be adjudged; therefore on behalf of the said A. B. I command you, and every of you, jointly and severally, that without delay you replevy, and cause to be delivered to the said A. B. his said cattle, goods, and chattels; and that you immediately summon the said C. D. to appear at my next County Court, to be holden at _____, in and for the said county, to answer the said A. B. in the plea aforesaid; and in what manner you shall have executed this precept, certify to me at my said next County Court, to be holden at the time and place aforesaid, under the peril attending the neglect thereof. Given under the seal of my office, this _____ day of _____, A. D. 1839.

By the Sheriff.

[*Or, if granted by a deputy, say, "By L. H., one of the deputies of the said Sheriff, according to the form of the statute."*]

And the bailiff thereupon makes out his

Summons.

W. to wit: By virtue of a warrant by the Sheriff of the county aforesaid to me in this behalf directed, I summon you to be and appear at the next County Court, to be holden for the county aforesaid, at _____, in the said county, to answer A. B. in a plea of taking and unjustly detaining his [cattle] goods, and chattels. Dated this _____ day of _____, A. D. 1839.

To Mr. C. D.

T. D. bailiff.

Replevin Bond.

Know all men by these presents, that we, A. B. of _____, G. A. of _____, and T. R. of _____, are jointly and severally held and firmly bound to G. H. esq. Sheriff of the county of _____, in the sum of £ _____, [*a sufficient sum to cover the value of the cattle or goods distrained, if taken damage feasant; or for rent, then double the value of the cattle or goods taken, to be ascertained on the oath of one witness,*] to be paid to the said Sheriff, or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made we bind ourselves and each and every of us in the whole, our and each and every of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this _____ day of _____, A. D. 1839.

The condition of this obligation is such, that if the above-bounded A. B. do appear at the next County Court to be holden for the county of _____, at _____, on the _____ day of _____ next, and do then and there

prosecute his suit with effect and without delay against *C. D.* for the taking and unjustly detaining of his cattle, goods and chattels, to wit, [*state the cattle or goods distrained,*] and do make return of the said cattle, goods and chattels, if a return thereof shall be adjudged; that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed, &c.

A. B. (l. s.)

G. A. (l. s.)

T. R. (l. s.)

Assignment of Replevin Bond, to be indorsed on the Bond.

Know all men by these presents, that I, *G. H.*, esquire, Sheriff of the county of *W.*, have, at the request of the above-named *C. D.*, the avowant [or "the person making cognizance"] assigned over unto him, the said *C. D.*, this replevin bond, according to the statute in such case made and provided. Dated &c.

[Seal of office.]

G. H.

On distress for rent by the 11 Geo. 2, c. 19, it is assignable at law; the 23rd section enacts, "that the Sheriff or other officer having authority to grant replevins, taking any replevin bond, shall, at the request and costs of the avowant or person making cognizance, assign such bond to the avowant or person aforesaid, by indorsing the same and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp⁽ⁿ⁾ (provided the assignment so indorsed be duly stamped before any action be brought thereupon), and if the bond so taken and assigned be forfeited the avowant or person making cognizance may bring an action and recover thereupon in his own name; and the Court when such action shall be brought may by a rule of the same Court give such relief to the parties upon such bond as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeazance of such bond." A *rent-charge* ^(o) is within the meaning of this statute.

Rent
charge.

Bond when
assignable.

The bond, although not in all points conformable to the directions of the statute, is notwithstanding good and assignable^(p); for instance, a bond conditioned to prosecute the suit with effect and to indemnify the Sheriff is good and assignable, although not conditioned likewise for prosecuting the suit with-

⁽ⁿ⁾ No stamp is now required either on the bond or assignment, 5 Geo. 4, c. 41.

^(o) *Short v. Hubbard*, 2 Bing. 349; 10 Moore, 107; *sed vide* 1 N. R. 56.
^(p) *Austin v. Howard*, 7 Taunt. 28; 2 Marsh. 352.

out delay (*q*): so a bond conditioned for appearance at the next County Court, prosecuting the plaint with effect, making a return if adjudged, and indemnifying the Sheriff from all charges and damages by reason of the replevin, is good and assignable (*r*).

It may be assigned to the avowant only, who may bring his action upon it without joining the party making cognizance (*s*), or the assignment may be to both and the action joint (*t*). A defendant is not entitled to an assignment of the bond on the plaintiff's neglecting to declare at the next County Court, if he himself occasioned it, as by not appearing to the summons, and if he obtains an assignment and brings his action, the Court will stay proceedings (*u*); or if the proceedings have been stayed by injunction, and in the meanwhile the plaintiff dies, the defendant is not entitled to an assignment of the bond (*x*); the conditions of the bond are distinct and independent of each other, and a breach of any one of them will occasion a forfeiture (*y*). The term prosecuting a suit *with effect* means with success, and relates to one continued prosecution of the suit, whether in the County Court or in the Court above; the condition of the bond is not satisfied by having prosecuted the suit with effect in the Court below (*z*). To fulfil the condition to prosecute *without delay* the plaintiff must use due diligence (*a*); the allowing two years to elapse without proceedings amounts to a breach thereof, and the obligee might recover on such breach, although judgment of non-pros was never signed in the County Court (*b*). If the delay be occasioned by the act of the Sheriff, the bond is not forfeited (*c*); but where the plaint was removed by re. fa. lo., and the plaintiff in replevin appeared, and the defendant did not, held that subsequent delay was not a breach of the bond (*d*).

When no assignment.

Conditions.

With effect and without delay.

When no forfeiture.

Where an assignment was not signed by the Sheriff, but by a person accustomed to act in the Sheriff's office in the name of the Sheriff, and under the seal of the office, it was held sufficient (*e*).

- (*q*) *Dunbar v. Dunn*, 10 Price, 54. 410; *Turnor v. Turnor*, 2 B. & P. 107.
 (*r*) *Short v. Hubbard*, 2 Bing. 349.
 (*s*) *Archer v. Dudley*, 1 B. & P. 381. (*a*) *Harrison v. Wardle*, 5 B. & Ad. 146.
 (*t*) *Phillips v. Price*, 3 M. & S. 180.
 (*u*) *Seal v. Phillips*, 3 Price, 17; (*b*) *Axford v. Perrett*, 1 M. & P. 470.
 and see *Harrison v. Wardle*, 5 B. & Ad. 146. (*c*) *Harrison v. Wardle*, *supra*.
 (*z*) *Ormond v. Brierley*, 12 Mod. 380. (*d*) *Ibid*.
 (*y*) *Perreau v. Bevan*, 8 D. & R. 88. 36.
 (*z*) *Gwillin v. Holbrook*, 1 B. & P. (*e*) *Middleton v. Sandford*, 4 Camp.

Replevin
when and
how made.

Replevin upon plaint may be made by the Sheriff by *verbal precept without writing* and *presently*, "*post querimoniam sibi factam*," without waiting till the next County Court. *Fitzherbert* assigns for reason, "that it may be that the Sheriff nor his bailiff cannot write, or that they may want such things where-with they may write a warrant," &c. but the suddenness of the business seems to afford a sounder reason for considering writing not necessary, for although in former ages few if any Sheriffs could write, yet as at the present day it would be as difficult to find one who could not write as to have found one then who could, and as the Sheriff *was and is obliged* in some cases to write, as for instance, to make a *written precept to his bailiff to make withernam*, the reason assigned seems to lose much of its force (*f*). The Statute of Marlbridge (*g*) would seem *literally* to require that the plaint should precede the granting of the precept, (and, strange enough, the 11 Geo. 2, c. 19, is silent on the point,) but the better opinion is, that replevin may be made *immediately*, and the reason given by Sir E. Coke is, "that it would militate against the scope of the statute, that the owners of the beasts should be deprived of the use of them until the day on which the County Court is holden" (*h*).

Pledges to
prosecute
and to re-
turn the
goods.

Before the Sheriff or his deputy can replevy upon writ or application as before observed, he must take pledges. In Co. Litt. 145 b, it is laid down, that the Sheriff ought to take two kinds of pledges, one by the common law, namely, *pledges to prosecute*; and another by the Statute of Westminster, st. 2, c. 2, s. 3, *pledges to return the goods*. And the statute of 11 Geo. 2, c. 19, (in distress for *rent*,) requires him to take *both*, with this difference, namely, that it gives the penalty for not prosecuting to the defendant, which at common law belonged to the King (*i*).

In what
value bonds
to be taken,
infra.

By the 11 Geo. 2, c. 19, s. 23, which is expressly confined to *distresses for rent*, "all Sheriffs and other officers having authority to grant replevins, may and shall in every replevin of a distress for *rent* take in their own names from the plaintiff, and two responsible persons as sureties, a bond in *double* the value of the goods distrained, such value to be ascertained by the

(*f*) Gilb. Repl. 99.

(*g*) 52 Hen. 3, c. 21.

(*h*) 1 Inst. 145 b; 2 Inst. 139; Br. Repl. pl. 46.

(*i*) *Perreau v. Bevan*, 5 B. & Cr. 248; 8 D. & R. 72.

oath of one or more credible witness or witnesses not interested in the goods or distress, which oath the person granting such replevin is hereby authorized and required to administer, and *conditioned* for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained in case a return shall be awarded, before any deliverance to be made of the distress." Hence it follows, that by the common law, according to which replevin for distress *damage feasant* may now be granted, it is still necessary that, 1st, pledges for the prosecution, which are merely nominal, (John Doe and Richard Roe), should be taken; and 2dly, pledges pro. ret. hab. Also, that under the statute of Geo. 2, *both* are to be taken likewise; the form of the bond is the same, with this exception, that when taken on a distress not for rent, it is taken in the *single* value of the goods distrained; on distresses for rent, it must be according to the statute of Geo. 2, in *double* the value of the goods distrained. In the former case the bond is not assignable so as to enable the assignee to bring an action in his *own* name upon it, in the latter case the bond is so assignable; if the sheriff take *one* pledge on a replevin for distraining cattle *damage feasant* it is sufficient; on a distress for rent there must be *two* (1). From the case of *Blacket v. Crissop* (m), a conclusion by no means warranted has been drawn, that a bond from the party replevying only, and not from the pledges, satisfies the statute of Westminster; but it is submitted that the case warrants but this inference that such a bond is valid as between the obligee (the Sheriff) and the obligor (the party replevying) but no more. *Holt, C. J.* puts the question in its true point of view, "the question" (says he) "will not be in this case whether the Sheriff can take a bond instead of pledges, as it would have been if the party had brought an action against the Sheriff for not having taken pledges, and the Sheriff had pleaded that he had taken this bond; but the question now is, whether this bond shall be void." It should have been premised that it was an action by *Blacket*, the Sheriff, against *Crissop*, the party replevying on his bond; the bond was holden good *inter se*, but the inclination of the Court as to the liability of the Sheriff, if an action had been brought against him for not having taken pledges, is clearly in the affirmative, and,

Form of bond.

Number of pledges.

Bond from party replevying only, not good.

(1) *Hucker v. Gordon*, 1 C. & M. 58.

(m) 1 Ld. Raym. 278; Lutw. 689; Dalt. 438.

consequently, that the bond was void as between the Sheriff and a stranger.

Sufficiency of sureties.

As to the sufficiency of sureties in law, as well as in estate, how many in number in distresses damage feasant or in distresses for rent he must take, and what inquiries the Sheriff is bound to make into their sufficiency, is hereafter, in the "Action for taking insufficient Sureties in Replevin," more fully considered (n).

Expense of preparing replevin bond.

A. and B. were in partnership as attorneys, A. alone was replevin clerk; held, that an action for the expenses of preparing a replevin bond must be brought by A. alone, although it was executed in the office where he and B. carried on their joint business.

Deliverance how made. Outer door.

*Difficulties often arise in making deliverance of goods distrained. By the statute of Westm. 1, c. 17, the Sheriff, after demand made, may break open the house of the person who has made the distress, in order to make deliverance; he may also raise the posse comitatus if he find it necessary so to do (o): if the cattle were taken and impounded in a liberty the Sheriff should direct his warrant to the bailiff of the liberty; if the bailiff of the liberty make no answer, nor replevy, the Sheriff may enter the liberty and replevy himself (p); if the goods by inquest of office are found to be eloigned, so that the Sheriff cannot replevy them, the Sheriff may issue a precept in the nature of a *capias in withernam* commanding his officer to take goods or cattle of the defendant to the value of those taken by him, and deliver them to the plaintiff, the plaintiff having first entered into a bond with sureties, conditioned as in other cases (q).*

Posse comitatus. If cattle taken in a liberty,

Goods eloigned.

Precept in Nature of a Withernam.

Westmoreland } *G. M. Esq., High Sheriff of the said county, to all and to wit. } singular my bailiffs of the said county greeting: Whereas A. B. hath found me sufficient security as well to prosecute his plaint against C. D. for taking and unjustly detaining his [cattle,] goods, and chattels, to wit [&c. set out the cattle and goods,] as to make return thereof, if return thereof shall be awarded; and thereupon, by virtue of my office, I have often commanded you and every of you, that you or some or one of you should cause to be replevied to the said A. B. his aforesaid [cattle] goods, and chattels, which the said C. D. hath taken and unjustly detains: and you, upon my several precepts of replevin to you directed, have certified*

(n) *Jeffery v. Bastard*, 4 Ad. & E. 829.

(o) 2 Inst. 193; Dalt. 435.

(p) 2 Inst. 194; 52 Hen. 3, c. 21, West. 2, c. 17.

(q) *Gilb. Rep.* 92; *Gwillim v. Holbrook*, 1 B. & P. 410.

the [cattle,] goods, and chattels aforesaid are eloigned to places to you unknown, so that you cannot replevy the same to the said *A. B.* Therefore I now command you, and every of you, that you or some or one of you do take in *withernam* the [cattle,] goods, and chattels of the said *C. D.* to the value of the said [cattle,] goods, and chattels so eloigned as aforesaid, and deliver the same to the said *A. B.* for his [cattle,] goods, and chattels last aforesaid; and also that you put by gages and safe pledges the said *C. D.* so that he be and appear at my next County Court to be holden at _____, in and for the said county, on the _____ day of _____ next, to answer to the said *A. B.* of the plea aforesaid: and that you or one of you return answer to this my mandate, at my said next County Court. Given under the seal of my office this _____ day of _____, *A. D.* _____.

G. M., High Sheriff.

If the defendant claims property in the goods taken, the Sheriff cannot proceed to replevy them without a writ *de proprietate probandâ* (*r*); it seems that the claim of property must be made by the defendant in person and not by bailiff(s); on the delivery of this writ to the Sheriff he summons a jury, as in other cases, to inquire to whom the property belongs; if they find the property to be in the plaintiff, deliverance is made to him; if in the defendant, the proceedings are at an end (*t*).

When defendant claims property. Sheriff's duties on the writ *de proprietate probandâ*.

Writ de Proprietate probandâ.

Victoria, &c. to the Sheriff of _____ greeting: Whereas we have often commanded you, that justly and without delay you shall cause to be replevied to *A. B.* the [cattle,] goods, and chattels of his, which *C. D.* hath taken and unjustly detaineth, or that you would signify to us the cause why you would not or could not execute our command formerly directed to you therein: and for that the said *C. D.* doth avouch the said [cattle,] goods, and chattels to be his own proper [cattle,] goods, and chattels, you could not replevy the same to the said *A. B.* as you have signified to us: we, not willing that the said *A. B.* should be defrauded of his [cattle,] goods, and chattels by such false avouchment whereby the said [cattle,] goods, and chattels if they belong to him, cannot be replevied to him, according to the law and custom of England, command you, that taking with you the keeper of the public pleas, in the presence of the said *C. D.* if he will be present, and he will hereupon be by you warned, you diligently inquire, by the oath of twelve honest and lawful men of your county, by whom the truth of the matter may be best known, whether the [cattle,] goods, and chattels so taken and detained be the [cattle,] goods, and chattels of the said *A. B.* or of the said *C. D.* And if by such inquisition it may appear to you that the said cattle, goods, and chattels be the [cattle,] goods, and chattels of the said *A. B.*, then you shall cause the same to be replevied to the said *A. B.* according to the tenor of our said commands therein formerly directed unto you; and, nevertheless, if the said *A. B.* shall give you security to prose-

(*r*) Co. Litt. 145; Wilk. Repl. 16. (*s*) Co Litt. 145. (*t*) *Ibid.*

cute his suit, then attach the said *C. D.* so that you may have him before us on _____, wheresoever we shall then be in England to answer us for the contempt done in this behalf, and the said *A. B.* for the damages which he hath sustained by reason of the avouchment of the said [cattle,] goods, and chattels, and have you then this writ. Witness, &c.

When entered to satisfy bond.

When the goods have been replevied and delivered to the plaintiff, he must, according to the conditions of his bond, bring his plaint at the *next* County Court, and prosecute his suit with effect and without delay; and the plaint must be entered the *next* County Court, in order that it may appear on the rolls of the Court, and must be entered in the full Court *sedente curia*. The entering of the plaint is the act of the party (*u*); the act of the Sheriff, or his deputy, in entering the plaint is merely ministerial. The not entering the plaint in due time creates a forfeiture of the bond; but if the plaintiff enters his plaint and afterwards is restrained by injunction till his death, whereby the plaint abates, the bond will not be forfeited; so by the death of the plaintiff the suit will abate, but the bond will not be forfeited (*v*); until the plaint is entered, there is no commencement of the suit of which a superior Court can take notice (*x*).

Entering plaint act of party.
Sheriff's duties in entering plaint.
Forfeiture of bond.

Plaint.

Form of plaint.

— County Court.
— to wit: *A. B.* complains of *C. D.* in a plea of taking the goods and chattels, to wit, [enumerate them] of the said *A. B.*, and unjustly detaining the same against gages and pledges, &c.

Pledges to prosecute } John Doe.
 } Richard Roe.

Sheriff's Precept.

Cumberland, } *G. M.*, Esquire, Sheriff of the county aforesaid, to *J.*
to wit. } *D. and R. R.*, my bailiffs of the said county; I command you that you summon *S. B.* so that he be and appear at my next County Court to be holden at _____, in and for the said county, on _____, the _____ day of _____ next, to answer *J. T.* in a plea of taking and unjustly detaining his cattle, goods, and chattels; hereof fail not. Given under the seal of my office, this _____ day of _____.

By the same Sheriff.

Bailiff's Summons.

Cumberland, } You are summoned to appear in person, or by some
to wit. } attorney, at the next County Court to be holden at _____

(*u*) *Ex parte Boyle*, 2 D. & R. 13. (*x*) *Jesseyman v. Gildart*, 1 N. R.
(*v*) *Ormond v. Brierley*, Carth. 519; 292; ante, p. 78.
12 Mod. 380.

, in and for the said county, on , the day of
 next, to answer to J. D. in a plea of ; hereof fail not.
 Dated this day of
 G. A. John Doe, bailiff.

Distringas or Attachment.

Cumberland, } G. M., Esq. Sheriff of the county aforesaid, to &c. :
 to wit. } I command you that you distrain [or attach] R. P. by
 his goods and chattels, so that he be at my next County Court to be holden
 at in and for the said county, on, &c. next, to answer J. D. in a
 plea of taking and unjustly detaining his cattle, goods, and chattels;
 hereof, &c. Dated, &c. By the same Sheriff.

Duces Tecum.

Cumberland, } G. A., Esq. Sheriff of the county aforesaid, to, &c., I
 to wit. } command you that you bring to my next County Court to
 be holden at , in and for the said county, on the day of
 next, all the goods and chattels of R. P., which you have distrained by
 virtue of a former precept directed to you, at the suit of J. B. in a plea
 of taking and unjustly detaining his cattle, goods, and chattels; and that
 you further distrain [or attach] the said R. P., by his goods and chat-
 tels so that he be at the next Court to be holden at , on the
 day of next ensuing, to answer the said J. B. in the said
 plea; and have there this precept. Dated, &c.

Venditioni Exponas.

Cumberland, } G. A., Esq. Sheriff of the said county, to T. D., my
 to wit. } bailiff of the said county, greeting: I command you that
 you expose to sale a steer appraised at 20s., of the goods and chattels of
 C. D., for that the said steer was attached at the suit of E. F. in a plea
 of ; and at the Court holden on the day, &c. the
 said C. D. although according to the custom of this Court, used from the
 time to the contrary whereof the memory of man is not, the said steer is
 forfeited, and that you have the money on the next Court there to be
 holden on the day of, &c. next ensuing, to satisfy the said E. F.
 of the debt aforesaid, and in what manner, &c. Dated, &c.

Supersedeas.

Cumberland, } G. A. Esq., Sheriff of the county aforesaid, to T. D.,
 to wit. } &c., greeting: Whereas I lately commanded you to attach
 C. D. by all his goods and chattels so that he should be at my Court to be
 held on the day of , to answer E. F. in a
 plea of ; but because the said C. D. hath appeared by J. S.
 his attorney, to answer the said E. F. in his plea aforesaid, therefore I
 command you entirely to cease from the execution of the said precept;
 and if you have taken or distrained any goods or chattels of the said C.
 D. by virtue of the said precept, that then, without delay, you redeliver
 them to the said C. D. Dated, &c.

Subpoena.

Cumberland, } G. A., Esq. Sheriff of the county aforesaid, to G. B.,
 to wit. } T. C., and J. T., &c., greeting: I command you and

each of you, that laying all other matters aside, and notwithstanding any excuse, you and each of you be in your own proper persons at my next County Court to be holden on _____, the _____ day of _____ next, to testify and speak the truth in a certain matter of controversy, depending in the same Court between C. D. plaintiff, and E. F. defendant, in a plea of taking and unjustly detaining the cattle, goods, and chattels of the said C. D.; and herein fail not at your peril. Dated, &c. (y)

New pleading rules do not extend to replevin.

The proceedings in replevin are the same as in any other suit by plaintiff; the pleadings, &c. are the same as in the superior Courts, with the exceptions already noticed: *the rules of Hilary Term, 4 Will. 4, do not extend to replevin.*

Proclamation for Jurymen.

You good men that be impanelled to try the issue between A. B. plaintiff, and C. D. defendant, answer to your names every man upon the first call, upon pain and peril that shall fall thereon.

Oath to Jurors.

You shall well and truly try the issue joined between these parties according to the evidence. So help you God.

Oath to Witnesses.

The evidence you are to give to this inquest touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth. So help you God.

Damages, amount of.

If the goods have not been delivered on the replevin, damages are recovered for the plaintiff as well for the value of the goods as for the detention; if the goods were delivered, which in general is the case, damages for the detention of the goods only are recoverable, usually four guineas, the supposed price of the replevin bond.

Judgment for plaintiff.

Of a judgment for plaintiff on demurrer, the form of entry is, "that the plaintiff do recover his damages by reason of the premises;" *on verdict*, "that the plaintiff do recover against the defendant the damages assessed by the jurors and costs de incremento."

Judgment for defendant.

On a judgment for defendant on verdict, demurrer or confession by the plaintiff, a return of the distress, irreplevisable, is awarded to him; *on a nonsuit*, a return of the distress; but not irreplevisable, for a second deliverance will lie (z).

(y) These forms may easily be altered to suit any other form of action by

inserting "a plea of debt," or "on promises," as the case may be.

(z) 2 Lill. Reg. 457.

Writ of Retorno Habendo on Non Pros for want of Declaration.

Victoria, &c. to the Sheriff of greeting: Whereas *C. D.* was summoned to be in our Court before us [*or in C. P.* "before our justices at Westminster"], to answer *A. B.* of a plea wherefore he took the [cattle,] goods and chattels of the said *A. B.* and unjustly detained them against gages and pledges, &c.; and the said *A. B.* afterwards in our same Court made default; wherefore it was considered in our same Court, that he and his pledges to prosecute should be in mercy, &c., and that the said *C. D.* should go thereof without day, &c.; and that he should have a return of the said [cattle,] goods and chattels, &c. Therefore we command you, that without delay you cause the said [cattle,] goods and chattels to be returned to the said *C. D.*, and that you do not deliver them, on the complaint of the said *A. B.* without our writ; and in what manner you shall have executed this our writ make appear to us immediately after the execution hereof, wheresoever we shall then be in England [*or in C. P.* "to our justices at Westminster immediately after the execution hereof,"] and have there this writ. Witness, &c.

Writ of Second Deliverance.

Victoria, &c. to the Sheriff of greeting: If *A. B.* shall make you secure of prosecuting his claim, and also of returning the [cattle,] goods and chattels which were lately adjudged to *C. D.* in our Court before us [*or in C. P.* "before our justices at Westminster"], on account of the default of the said *A. B.* if a return thereof shall be adjudged; we command you, that if, by virtue of our writ of *retorno habendo*, to you thereupon before directed, you have caused the said [cattle,] goods and chattels to be returned to the said *C. D.* then that you cause them to be re-delivered to the said *A. B.*, and put by gages and safe pledges the said *C. D.* that he be before us on wheresoever we shall then be in England [*or in C. P.* "before our said justices at Westminster aforesaid, on "], to answer to the said *A. B.* in a plea of taking and unjustly detaining of the [cattle,] goods and chattels aforesaid, and have there the names of the pledges and this writ. Witness, &c.

Warrant on the Writ de Retorno Habendo.

C. (to wit.) *G. A.*, Esquire, Sheriff of the said county, to *T. B.* my bailiff, greeting. By virtue of her Majesty's writ *de retorno habendo*, to me directed and delivered, stating that *C. D.* lately in her Majesty's Court, before her Majesty's justices at Westminster, was summoned to answer *A. B.* in a plea why he took the goods and chattels of him the said *A. B.*, to wit, , and unjustly detained the same against sureties and pledges; and the said *A. B.* in her Majesty's same Court, before her Majesty's justices at Westminster, made default, wherefore it was considered in her Majesty's same Court, before her Majesty's justices, that he and his pledges to prosecute should be in mercy, &c.; and that the said *C. D.* should go thereof without day, and that he should have a return of the goods and chattels aforesaid. Therefore I command you, as by the said writ I am commanded, that without delay you cause the goods and chattels aforesaid to be returned to the aforesaid *C. D.*; and in what manner you shall execute this precept render me an account, so that I may make the same appear to her said Majesty's justices at Westminster, on ; and have you this, and so forth. Given under the seal of my office, the day of 183
[Seal of office].

By the Sheriff.

Return of Elongata.

Before the coming of this writ to me, the goods and chattels within mentioned were conveyed away by the within-named *A. B.* to places to me unknown; wherefore I cannot cause the same to be returned to the said *C. D.* as I am within commanded.

The answer of *G. A.*, Esquire, Sheriff.

Return thereto where the whole of the Goods are returned.

I have caused the goods and chattels within mentioned to be returned to the within-named *C. D.*, as I am within commanded.

The answer of *G. A.*, Esquire, Sheriff.

Return where part of the Goods were returned and part eloigned.

I have caused one, &c., part of the goods and chattels within mentioned, to be returned to the within-named *C. D.*, as I am within commanded; but before the coming of this writ to me, the rest of the goods and chattels within mentioned were conveyed away by the within-named *A. B.* to places to me unknown, wherefore I cannot cause the same to be returned to the said *C. D.*, as I am within commanded.

G. A., Esquire, Sheriff.

Warrant on the Writ of Second Deliverance.

C. (to wit.) *G. A.* Esq., Sheriff of the said county, to *W. B.* my bailiff, greeting. By virtue of her Majesty's writ of second deliverance, to me directed and delivered, I command you, as by the said writ I am commanded, that without delay you cause *one horse*, &c. which lately in her Majesty's Court, before her Majesty's justices at Westminster, were adjudged by the default of *A. B.*, to be delivered to the said *C. D.*, and that you put by sureties and safe pledges the said *A. B.*, that he be before her Majesty's justices at Westminster, on to answer to the said *C. D.* of the taking and unjustly detaining the goods and chattels aforesaid; and have you this and the names of the pledges and so forth. Given under the seal of my office, this day of 18 .

[Seal of office].

By the Sheriff.

Return of the Writ of Second Deliverance, where the Goods are delivered.

By virtue of this writ to me directed, I have caused to be delivered to the within-named *C. D.* the goods and chattels within mentioned, as I am within commanded to do. The pledges are *John Doe* and *Richard Roe*.

The answer of *G. A.*, Esquire, Sheriff.

Return, when part only of the Goods could be delivered.

By virtue of this writ to me directed, I have caused to be delivered to the within-named *C. D.* part of one rick of hay, part of the goods and chattels within mentioned, being all the said goods and chattels which are found in my bailiwick. The pledges are *John Doe* and *Richard Roe*.

The answer of *G. A.*, Esquire, Sheriff.

Bond to be taken before issuing Warrant on a Writ of Second Deliverance.

KNOW ALL MEN by these presents that we, *A. B.*, *C. D.* and *E. F.* of Stamp the in the county of *C.*, are held and firmly bound to *G. A.*, Esq., Sheriff same as of the county of *C.* aforesaid, in the sum of £ of lawful money of Great other bonds. Britain, to be paid to the said Sheriff, or his certain attorney, executors, administrators and assigns, for which payment to be well and truly made we bind ourselves and each of us, and each and every of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this day of in the year of the reign of our sovereign lady Victoria, of the united kingdom of Great Britain, &c., and in the year of our Lord 18 .

The Condition of the above Bond when part only of the Goods could be delivered.

THE CONDITION of the above-written obligation is such, that whereas the above-named Sheriff, by virtue of her Majesty's writ *de retorno habendo*, did cause one stack of oats, &c., in the said writ mentioned, to be returned to the said in the said writ named; the rest of the said goods and chattels being, before the coming of the said writ to the said Sheriff, conveyed away by the said to places to the said Sheriff unknown, wherefore he could not cause the same to be returned to the said as by the said writ he was commanded: and whereas the above-named Sheriff, by virtue of her Majesty's writ of second deliverance, hath delivered to the said , the said one stack, &c.; if, therefore, the said shall prosecute his complaint according to the tenor of second deliverance, and shall make return of the said one stack, &c., if a return thereof shall be adjudged, and the said Sheriff, his heirs, executors and administrators, shall acquit and save harmless: then this obligation to be void; otherwise to remain in full force and effect.

Sealed, &c.

A. B. (L. s.)
C. D. (L. s.)
E. F. (L. s.)

It has been already stated when causes may be removed from the County Court into the superior Courts by *pone, re. fa. lo.* or *false judgment*, which are equally applicable in replevin as in other cases (a).

Pone, for Plaintiff.

Victoria, &c. to the Sheriff of greeting: At the request of the plaintiff, put before us on wheresoever we shall then be in England, [or in *C. P.* "before our justices at Westminster, on ,"] the plaint which is in your county, by our writ, between *A. B.* and *C. D.* of the [cattle,] goods and chattels of the said *A. B.* taken and unjustly detained; and summon by good summoners the said *C. D.* that he be then there to answer the said *A. B.*; and have there the summoners and this writ. Witness ourself at Westminster, the day of , in the year of our reign.

(a) *Ante*, p. 72.

For Defendant.

Victoria, &c. to the Sheriff of greeting: Put before us, on , wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on ,"] the plaint which is in your county, by our writ, between A. B. and C. D. of the [cattle,] goods and chattels of the said A. B. taken and unjustly detained; and apprise the said A. B. that he may be there, if he will, to prosecute his plaint aforesaid against the said C. D.; and have there this writ. Witness ourself at Westminster, the day of , in the year of our reign; let this writ be executed if the said C. D. desire it, otherwise not.

What *re. fa.* The *re. fa. lo.* will remove the plaint, although it may have
lo. removes. been discontinued, or although the *re. fa. lo.* may have issued before the plaint was entered (b); if after the cause be removed the parties proceed in the Court below, the Sheriff may be attached for contempt (b).

Re. fa. lo. for Plaintiff.

Victoria, &c. to the Sheriff of greeting: We command you, that in your full county you cause the plaint to be recorded which is in the same county, without our writ, between A. B. and C. D. of the [cattle,] goods and chattels of the said A. B. taken and unjustly detained, as it is said; and that you have the said record before us, on , wheresoever we shall then be in England, [or in C. P. "before our justices at Westminster, on ,"] under your seal, and the seals of four lawful knights of the same county, of those who were present at the said recording; and that you prefix the same day to the parties, that they be then there, to proceed in that plaint as shall be just; and that you have there the names of the said four knights, and this writ. Witness ourself at Westminster, the day of , in the year of our reign. Let this writ be executed, if the aforesaid A. B. require it, otherwise not.

For Defendant.

[End thus: Let this writ be executed, if the cause be true, and the said C. D. desire it, otherwise not."]

Summons.

To and , my bailiffs.
 Westmoreland, } Summon A. B. and C. D., that they severally be
 } to wit. } before our lady the Queen on , wheresoever our
 said lady the Queen shall then be in England, [or in C. P. "before the
 justices of our lady the Queen at Westminster, on ,"] to proceed in
 a certain plaint between the said A. B. and C. D., of the [cattle,] goods,
 and chattels of the said A. B., taken and unjustly detained, as it is said,
 as shall be just. Dated this day of , 1839.

G. M., Sheriff.

Return.

By virtue of this writ to me directed, in my full County Court held at

(b) Greenwood, 57, 58.

, on the day of, &c., I have caused the said plaint to be recorded, which is in the same county, without the writ of our said lady the Queen, between *A. B.* and *C. D.*, of the [cattle,] goods, and chattels of the said *A. B.* taken and unjustly detained; which said plaint appears in a certain schedule to this writ annexed; and I have the said record before our said lady the Queen, [or in *C. P.* "before the justices of our said lady the Queen,"] at Westminster, on the day within written, under my seals and the seals of *A.*, *B.*, *C.* and *E.*, four lawful knights of the same county, of such as were present at the said record; and I have prefixed the same day to the parties, that they may then be there ready to proceed in the said plaint as shall be just, as within I am commanded.
The answer of *G. M.*, Sheriff.

Schedule.

At the full County Court of *G. M.*, Esquire, Sheriff of the county of *W.*, holden at *A.*, in and for the said county, the day of, &c., before *E.*, *F.*, *G.*, and *H.*, freeholders of the same county, it is (amongst other things) entered as follows: , to wit; *A. B.* complains [&c. *proceed as in the plaint, ante*, p. 86.] And at the full County Court of the said Sheriff, holden at *A.*, in and for the same county, the day of, &c. in the year aforesaid, before *G. H.*, *T. R.* &c., four freeholders of the same county, the said plaint between the parties aforesaid was recorded, as by the writ hereunto annexed was required. In testimony whereof, as well we the said Sheriff, as the said *E. F.*, &c. who were present at the said record, have hereunto respectively put our seals, on the day and year and at the place above mentioned.

By the same Sheriff (*L. s.*)
G. H. (*L. s.*)
T. R. (*L. s.*)

Writ of False Judgment.

Victoria, &c. to the Sheriff of greeting: If *C. D.* shall give you security to prosecute his suit, then, in your full county, cause the plaint to be recorded, which was in the same county, without our writ, between *A. B.* and the said *C. D.* of a plea of taking and unjustly detaining the [cattle,] goods and chattels of the said *A. B.* as it is said, wherein the said *C. D.* complaineth that false judgment hath been given against him in the said county; and that you have the said record before our justices at Westminster, on , under your seal, and the seals of four lawful knights of the same county, of such as shall be present at the said recording; and summon by good summoners the aforesaid *A. B.* that he be then there to hear the said record; and have you there the summoners, the names of the said four knights, and this writ. Witness ourself at Westminster, the day of , in the year of our reign.

To this writ the Sheriff makes his return, and summons the parties in the same manner as on a *re. fa. lo.*; the original minute of the proceedings need not be returned (*c*), but complete entries must be made (*d*).

(*c*) *Dyson v. Wood*, 3 B. & C. 449.

(*d*) *Overton v. Swittenham*, 6 Dowl. 641; *ante*.

SECTION IV.

COUNTY COURT—OUTLAWRY.

Peculiar to
the County
Court.
Sheriff's
duties
therein.

These proceedings are, as well as the action of replevin, peculiar to the County Courts. To carry them into effect is partly the duty of the Sheriff, and partly that of the Coroner of the county; the former in a *ministerial*, the latter in a *judicial* character—the former to execute, return writs, make proclamations, &c.; the latter to pronounce judgment of outlawry.

Outlawry,
what is.

Outlawry (*utlagaria*) is defined to be “the being put out of the law,—the loss of the benefit of the subject, that is, of the Queen's protection” (*e*).

Waiver and
outlawry
distinguish-
ed.

When a man is in this *lupine* state he is said to be *outlawed*; when a woman, she is said to be *waived*, (*derelicta*, *left out*, or *not regarded*), and if the return is outlawed instead of waived, it is assignable as error (*f*); as to the origin and reason of so material a distinction, we must briefly refer to the following authorities, Co. Litt. s. 186, 122 c; Vin. Abr. *Utlagaria*; a distinction clearly traceable to the Saxon times, when all men above the age of twelve years (*but no women*) were sworn to the law in the Court Leet; and for the same reason an infant under the age of twelve years cannot be outlawed (*g*). Lord Coke states the age to be *twelve* years, but see 2 Roll. Abr. 805; 2 Hale, 204; where it is stated to be *fourteen*. Note, such an outlawry would not be void, only voidable by writ of error (*h*).

At what
age.

When process of out-
lawry lies.

The old authorities agree in this proposition of law, “*that process of outlawry lies only where a capias lies*” (*i*); being so, the *capias* (although abolished as the means of commencing an action) still affords a test as to the validity of proceedings in outlawry; with this rule and the Uniformity of Process Act before us, the law at this day may be stated, we think, thus: In all personal actions process of outlawry will lie, except where a *capias* would not lie; such seems to be the effect of that statute, and not only to extend it to all personal actions but to all the

(*e*) Cowell.

(*f*) Cro. Jac. 358; 1 Roll. Rep. 407; 1 Roll. Abr. 804.

(*g*) Co. Litt. 128 a.

(*h*) Dyer, 239 a; 2 Roll. Abr. 205.

(*i*) 5 Bac. Abr. 218; 2 Roll. Abr. 805; Lee's Pr. Dict. 984; see Selden's Table Talk, where a King of Spain is said to have been outlawed, vol. vi. p. 2041.

three (*j*) Courts of Westminster. By other statutes it lies in actions on the case (*k*), debt, detinue (*l*), covenant, account, trespass vi et armis, and in replevin (*m*). Inferior Courts could not award this process, even though the process were a *capias* (*n*). "In civil actions it is considered as in the nature of civil process to compel an appearance to the suit; or if after judgment, to procure satisfaction. The forfeiture is nominally to the *Queen*, yet in truth it goes to the plaintiff towards payment of his demand. If the outlaw appears, pays all the costs, puts in sufficient bail, and does every thing he can to put the plaintiff in as good a condition as he would have been in originally; or if, after judgment, the outlaw pays the debt and costs, the Court removes the outlawry upon motion *without* any writ of error." The form of the reversal always is, "for the errors *assigned* and other errors appearing on the record (*o*); although there is in truth no error at all."

Nature of process in civil process.

. The *capias* being now abolished as a mean of commencing an action, the first step towards outlawry will be the issuing of a writ of summons as in ordinary cases; "And in case it shall be made appear by affidavit, to the satisfaction of the Court out of which the process issued, or, in vacation, of any judge of either of the said Courts, that any defendant has not been personally served with any such writ of summons as herein-before mentioned, and has not, according to the exigency thereof, appeared to the action, and cannot be compelled so to do without some more efficacious process, then and in any such case it shall be lawful for such Court or judge to order a writ of *distringas* to be issued, directed to the Sheriff of the county wherein the dwelling-house or place of abode of such defendant shall be situate, or to the Sheriff of any other county, or to any other officer to be named by such Court or judge, in order to compel the appearance of such defendant; which writ of *distringas* shall be in the form, and with the notice subscribed thereto, mentioned in the schedule to this act, marked No. 3 (*p*); which writ of *distringas*

The first proceeding to outlawry. Appearance may be enforced by writ of *distringas* in case a defendant cannot be served with the writ of summons.

(*j*) 2 Will. 4, c. 39; *Jones v. Price*, 2 Dowl. 43.

(*k*) 19 Hen. 7, c. 9.

(*l*) *Dyer*, 223 a; *Co. Litt.* 128 b.

(*m*) 25 Edw. 3, st. 5, c. 7.

(*n*) *Cro. Jac.* 222; 1 Sid. 268.

(*o*) *Lord Mansfield; Rex v. Wilkes*, 4 Burr. Rep. 2549.

(*p*) 2 Will. 4, c. 39.

Return of
distringas.

and notice, or a copy thereof, shall be served on such defendant, if he can be met with, or, if not, shall be left at the place where such *distringas* shall be executed; and a true copy of every such writ and notice shall be delivered together therewith to the Sheriff or other officer to whom such writ shall be directed; and every such writ shall be made *returnable on some day in term, not being less than fifteen days after the teste thereof*, and shall bear teste on the day of the issuing thereof, whether in term or in vacation; and if such writ of *distringas* shall be returned *non est inventus and nulla bona*, and the party suing out such writ shall not intend to proceed to outlawry or waiver, according to the authority herein-after given, and any defendant against whom such writ of *distringas* issued shall not appear at or within eight days inclusive after the return thereof, and it shall be made appear *by affidavit* to the satisfaction of the Court out of which such writ of *distringas* issued, or, in vacation, of any judge of either of the said Courts, that due and proper means were taken and used to serve and execute such writ of *distringas*, it shall be lawful for such Court or judge to authorize the party suing out such writ to enter an appearance for such defendant, and to proceed thereon to judgment and execution."

Proceedings
to outlawry.

V. "And be it further enacted, that upon the return of *non est inventus* as to any defendant against whom such writ of *capias* shall have been issued, and also upon the return of *non est inventus and nulla bona* as to any defendant against whom such writ of *distringas* as herein-before mentioned shall have issued, whether such writ of *capias* or *distringas* shall have issued against such defendant only, or against such defendant and any other person or persons, it shall be lawful, until otherwise provided for, to proceed to outlaw or waive such defendant by *writs of exigi facias and proclamation*, and otherwise, in such and the same manner as may now be lawfully done upon the return of *non est inventus* to a pluries writ of *capias ad respondendum* issued after an original writ: provided always, that every such writ of *exigent* and *proclamation*, and other writ subsequent to the writ of *capias* or *distringas*, *shall be made returnable on a day certain in term*; and every such first writ of *exigent* and *proclamation* shall bear teste on the day of the return of the writ of *capias* or *distringas*, whether such writ be returned in term or in vacation; and every subsequent writ of *exigent* and *proclamation* shall bear teste on the day of the

Return of
exigent, &c.

return of the next preceding writ; and no such writ of *capias* or *distringas* shall be sufficient for the purpose of outlawry or waiver if the same be returned within less than *fifteen* days after the delivery thereof to the Sheriff or other officer to whom the same shall be directed."

VI. "And be it further enacted, that after judgment given in any action commenced by writ of summons or *capias* under the authority of this act, proceedings to outlawry or waiver may be had and taken, and judgment of outlawry or waiver given, in such manner and in such cases as may now be lawfully done after judgment in an action commenced by original writ: provided always, that every outlawry or waiver had under the authority of this act shall and may be vacated or set aside by writ of error or motion, in like manner as outlawry or waiver founded on an original writ may now be vacated or set aside."

Proceedings to outlawry may be had after judgment given under the authority of this act.

VII. And be it further enacted, that for the purpose of proceeding to outlawry and waiver upon such writs of *capias* or *distringas* returnable to the Court of Exchequer, it shall and may be lawful for the Lord Chief Baron of the said Court, and he is hereby required, to appoint from time to time a fit person, holding some other office in the said Court, to execute the duties of a filazer, exigenter, and clerk of the outlawries in the same Court."

Filazer to be appointed in the Court of Exchequer.

The subscribed form of affidavit may be adopted *mutatis mutandis* (q):—

In the Queen's Bench, [or "C. P." or "E. P."]

Between

{ A. B. Plaintiff,
and
C. D. Defendant.

G. A. clerk to T. R. of _____, gentleman, attorney for the above-named plaintiff, maketh oath and saith, that on or about the _____ day of _____ last, there issued out of this honourable Court a writ of summons at the suit of the above-named plaintiff against the above-named defendant, dated the _____ day of _____, A. D. 1839, and a true copy whereof is as follows (r) [*copy it*]. And this deponent further saith, that he has used all the means in his power and all possible diligence to serve the said defendant personally with a copy of the said writ of summons (s), and that

Affidavit to obtain *distringas*.

(q) It should be observed that the requisites for moving for a *distringas*, according to the old practice, are applicable to the writ of summons, and must be complied with before moving for a *distringas*; *Johnson v. Rouse*, 1 Cr. & M. 26; 3 Tyr. 161. Again, a *distringas* is grantable for the purpose

of enabling plaintiff to proceed to outlawry under circumstances which would not entitle plaintiff to one to compel an appearance.

(r) *Hannam v. Dietrichsen*, 5 Taunt. 853; 4 Taunt. 619.

(s) *Jones v. Price*, 2 Doug. 42; *Howit v. Melton*, 3 Tyr. 822; *John-*

for the purpose of such service, he, this deponent, did, on the day of instant [or "last"] go to the dwelling-house and place of residence (t) of the above-named defendant, being No. (u), ["street, &c."] in the county of M. [or "situate, &c."] and this deponent saith that he then saw there a person who informed him that she was the wife of the said defendant, and which information this deponent verily believes to be true; and this deponent saith that he did then inquire of her if the defendant was at home, to which inquiry she answered (x) and said he was not and could not be seen; that he, this deponent, then informed her of the nature of his business, and that he wanted to serve the defendant, her husband, with a copy of the said writ; and did then inform the wife of the defendant that he would call again for the same purpose, and appointed to see the defendant on Monday (y), the day of instant, [or "last,"] at twelve (z) o'clock in the forenoon; and the deponent further saith that he did, for the purpose aforesaid, on the day and hour so appointed as last aforesaid, call again at the dwelling-house and place of abode of the defendant, and then and there saw the wife of the defendant, and told her the purpose of his business and inquired of her if the defendant was at home, and she said he was not and could not be seen; and this deponent further saith, that he told her that he would call again, and appointed Monday, the day of , at twelve o'clock of the noon on the same day, to see the defendant; on which day and hour he, the deponent, did then call accordingly, and did then apply for and inquire for the defendant if he was at home, to which she answered that he was from home and could not be seen, and did then tell her of the nature of his business, and did then and there leave (a) a copy of the said writ of summons with her for the defendant, and told her to give it to him. And this deponent further saith, that for the reasons aforesaid he verily believes the said defendant kept and still keeps out of the way to avoid being served with the said summons. And this deponent further saith, that the defendant hath not appeared (b) thereto.

Sworn, &c.

G. A.

son v. Rouse, 1 Cr. & M. 26; 3 Tyr. 161; and see *Pitt v. Eldred*, 1 Tyr. 128.

(t) *Thomas v. Thomas*, 2 M. & Sc. 730; *Hooker v. Tooke*, 1 Hodges, 315; *Hall v. Gumble*, 1 Tyr. 490.

(u) *Bonnor v. Austin*, 2 C. & G. 45, 94.

(x) The answers must be stated; *Fisher v. Goodwin*, 2 Tyr. 164. So also the replies (if any) so as to raise the inference that defendant keeps out of the way to avoid the process, 1 Tyr. 498. When it is clear that the defendant keeps out of the way to prevent being served, the Court will grant a distringas, although three calls and two appointments have not been made; *Hickman v. Dallimore*, 4 Dowl. 278; 1 Harr. & W. 524; see precedent of affidavit where one call was made, 3 Ch. Gen. Pr. 412.

(y) The three calls must be made

on different days; *Cross v. Wilkins*, 4 Dowl. 279.

(z) The day and hour must be appointed; *Wills v. Bowman*, 2 Dowl. 413; *Johnson v. Dimsey*, *ibid.* 400. The three calls need not be by the same person; *Smith v. Good*, 2 Dowl. 398.

(a) *Mason v. Lee*, 4 Nev. & M. 240; 1 Har. & Woll. 380; *Hooker v. Tooke*, 1 Hodges, 315; *Street v. Alvanley*, 1 C. & M. 27; *Hill v. Moule*, 3 Tyr. 162, n.

(b) *Hooker v. Townsend*, 1 Hodges, 204. The affidavit must not show that defendant is out of the kingdom; *Fraser v. Case*, 2 M. & Sc. 720; 9 Bing. 464. The Court will not grant the rule in the alternative to compel an appearance of or to outlaw the defendant; *Fraser v. Case*, 2 M. & Sc. 720.

Præcipe for Distringas.

Westmoreland.—Writ of distringas for *A. B.* against *C. D.* returnable on (d) in an action of debt.

R. A. Attorney, 1838.

The Writ of Distringas (e).

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of the faith; to the Sheriff of , greeting: We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same and distrain upon the goods and chattels of *C. D.* for the sum of forty shillings, in order to compel his appearance in our Court of Q. B. [or "C. P." or "Exch. of Pleas"], to answer *A. B.* in an action of debt [or as the case may be], and how you shall execute this our writ you make known to us in our said Court on the day of now next ensuing. Witness, &c.

The following Notice must be subscribed thereto.

In the Q. B. [or "C. P." or "Exch. of Pleas."]

Between *A. B.* plaintiff and *C. D.* defendant.

Mr. *C. D.*

Take notice, that I have this day distrained upon your goods and chattels in the sum of forty shillings, in consequence of your not having appeared in the said Court to answer to the said *A. B.* according to the exigency of a writ of summons bearing teste on the day of ; and that in default of your appearance to the present writ within eight days inclusive after the return hereof, the said *A. B.* will cause proceedings to be taken to outlaw you.

The Writ of Distringas, into the County Palatine of Lancaster.

Victoria, &c. to the Chancellor of our county palatine of Lancaster, or his deputy there, greeting: We command you, that by our writ, under the seal of our said county palatine, to be duly made and directed to the Sheriff of our said county palatine, you command the said Sheriff that he omit not by reason of any liberty in his bailiwick, but that he enter the same and distrain upon the goods and chattels of *C. D.* for the sum of forty shillings, in order to compel his appearance in our Court of Q. B. [or "C. P." or "Exch. of Pleas"], to answer *A. B.* in an action of debt [or as the case may be], and how he shall execute that our writ be made known to us in our said Court, on the day of now next ensuing. Wit-

(d) There must be fifteen days between the delivery and the return; the writ is signed and sealed and issued from the same office as the writ of summons and the same fees are payable; rule M. T. 3 Will. 4.

(e) The writ must be directed to the Sheriff of the county in which the defendant is to be outlawed; generally to the Sheriffs of London, because there the defendant may be exacted every fortnight, in other counties every month. The writ being filled up, signed and sealed, as in other cases,

must be taken to the Sheriff's office and left there; it cannot be returned before the expiration of fifteen days from the delivery, and it would seem that an actual endeavour should be made to execute the writ: and that it is not now a matter *pro formâ* as it used to be. *Pigou v. Drummond*, 1 Bing. N. C. 354; 3 Dowl. 275. When returned "*non est inventus and nulla bona*," the writ and return are taken to the clerk of the exigents, who makes out the *exigi facias* and writ of proclamations.

neat [name of chief justice or chief baron], at Westminster, the day of _____, in the _____ year of our reign.

The following Notice must be subscribed to this Writ.

In the Court of Q. B. [or "C. P." or "Exch. of Pleas."]

Between A. B. plaintiff and C. D. defendant.

Mr. C. D.

Take notice [&c. proceed as in the notice, and indorse it as directed ante.]

Return of non est inventus and nulla bona.

The within named C. D. is not found in my bailiwick, nor hath he any thing in the same by which he can be distrained.

The answer of W. M. Sheriff.

OUTLAWRY ON MESNE PROCESS.

Writ of Exigi Facias (f).

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the Sheriffs of [London] greeting: We command you that you cause C. D. late of _____, in the county of _____, farmer, to be demanded from Hustling to Hustling, [or if the *exigi facias* be not directed to the Sheriffs of London, say, "from County Court to County Court,"] until, according to the law and custom

(f) It must be tested on the day of the return of the distringas whether in term or vacation; there must also be fifteen days at least between the teste and return; and it must be returnable in the same or the following term on a day certain (2 Will. 4, c. 39, s. 5); five County Courts or Hustings should intervene between the teste and return. If by the Sheriff's return to the writ of *exigi facias* it appears that there have not been five County Courts or Hustings between the teste and return, an *allocatur exigent* must be issued to make up the number; and if necessary another *allocatur exigent* and so forth; but the return of the *exigi facias* should be so regulated as to save the expense of these "*allocatur exigents*." The writ of *exigi facias* is executed by exacting the defendant at five successive County Courts or Hustings; Plowd. 371; 3 Lev. 245; 2 B. & C. 353; unless before that time the defendant appears. The writ must be actually in the Sheriff's possession at the time the defendant is demanded. *Volet v. Waters*, 3 D. & R. 55. Command the bailiff to make proclamation thus:—

"All manner of persons keep silence

and hear the Queen's writ of exigent and proclamation read."

Then call the defendant:

"C. D., appear, and answer A. B. in an action of debt, or judgment of outlawry (or waiver) will be pronounced against you."

On mesne process, if the defendant appear on the exigent the Sheriff may take bail from him as in ordinary cases; after judgment he cannot; Tidd's Pr. 130, 8th edit.; see also 4 Term Rep. 505.

As to the particularity required in the return to the writ of *exigi facias*, see *Middleton's case*, Cro. Jac. 358; *Rex v. Almon*, 5 Term Rep. 202; *Taylor v. Waters*, 3 D. & R. 575; 2 Roll. Abr. 802; Dalt. 239; if the defendant be in the Sheriff's custody at the time of the delivery of the writ or before the *quinto exactus* the Sheriff must return this; or if a supersedeas hath been delivered to him he must make his return accordingly. Whether the demise of the crown or the death of the defendant are good returns seem doubtful, it would seem not; in such cases the Sheriff should proceed; Dalt. 239:

of England, he be outlawed, if he do not appear; and if he do appear, then that you take him, and him safely keep, so that you may have his body before us [*or in C. P.* "before our justices," *or in Exch.* "before the barons of our said Exchequer,"] at Westminster, on , to answer *A. B.* in an action of debt, at the suit of the said *A. B.*; and whereupon you returned to us [*or in C. P.* "to our justices," *or in Exch.* "to our barons,"] at Westminster, on last past, that the said *C. D.* was not found in your bailiwick, and that he had nothing in your bailiwick by which he could be distrained, and have there this writ. Witness, &c.

Return to Exigi Facias.

By virtue of this writ to me directed, at my County Court held at , *Exigi facias* , in and for the county of , on , the day of , *teste return,* [*or if in London,* "at the Husting of pleas of land, holden in the Guild- *execution* hall of the city of London, on ,"] in the year within written, the within-named *C. D.* was a first time demanded, and did not appear: And at my County Court, held at aforesaid, on , the day of , in the year aforesaid, [*or in London,* "at the husting," &c.] the said *C. D.* was a second time demanded, and did not appear: And at my County Court, held at aforesaid, on , the day of , in the year aforesaid, [*or in London,* "at the Husting," &c.] the said *C. D.* was a third time demanded, and did not appear: And at my County Court, held at aforesaid, on , the day of , in the year aforesaid, [*or in London,* "at the Husting," &c.] the said *C. D.* was a fourth time demanded, and did not appear: And at my County Court, held at aforesaid, on , the day of , in the year aforesaid, [*or in London,* "at the Husting," &c.] the said *C. D.* was a fifth time demanded, and did not appear: Therefore by the judgment of , Esq., coroner of our sovereign lady the Queen, for the county aforesaid, the said *C. D.*, according to the law and custom of England, is outlawed.

The answer of *G. A.*, Esq., Sheriff.

If all the County Courts or Hustings were not holden in the time of the same Sheriff, the return should be thus:

By virtue of this writ to me directed [&c. *here state the County Courts or Hustings at which the defendant was demanded, in the time of the late Sheriff, and conclude his return with "The answer of S. S. Sheriff" then say*]

This writ, as above indorsed, was delivered to me the under-named present Sheriff by the above-named late Sheriff, at his going out of office.

At my County Court [&c. *as ante.*] The answer of *G. A.*, Esq., Sheriff.

Where the Defendant appears.

By virtue of this writ to me directed, at my County Court, held at *A.*, in and for the said county of *N.*, on the day of , in the second year of the reign of our sovereign lady Victoria, the within-named *C. D.* was a first time demanded; and then and there appeared, and then rendered himself into my custody; whose body I have ready before our lady the Queen, at the day and place within-mentioned, as within I am commanded.

The answer of *G. A.*, Esq., Sheriff.

Allocatur exigent.

Victoria, &c. to the Sheriff of greeting: We command you, that

allowing those County Courts, [or if in London, "those Hustings,"] at which C. D. late of was demanded and did not appear, as you returned to us, [or in C. P. "to our justices," or in *Exch.* "to the barons of our Exchequer,"] at Westminster, on [the return of the *exigent*] last past, you cause the said C. D. to be further demanded at your next County Court, [or "Husting," if only one return is wanting, or if more than one, "from County Court to County Court," or "from Hustung to Hustung,"] until, according to the law and custom of England, he be outlawed if he do not appear; and if he do appear, then that you take him, and him safely keep, so that you may have his body before us, [or in C. P. "before our justices," or in *Exch.* "before the barons of our said Exchequer,"] at Westminster, on , to answer A. B. in an action of debt, at the suit of the said A. B. and have there this writ. Witness, &c.

Writ of Proclamations (g).

Victoria, &c. to the Sheriff of greeting: Whereas by our writ we lately commanded you that you should cause C. D. late of , to be demanded from County Court to County Court, [or if in London, "from Hustung to Hustung,"] until, according to the law and custom of England,

(g) This writ was introduced by the statute of 6 Hen. 8, c. 4, but as to civil proceedings it is now governed by the 31 Eliz. c. 3, s. 1, which enacts, "that in every action personal wherein any writ of *exigent* shall be awarded out of any Court in or after the term of Easter next coming, one writ of proclamation shall be awarded and made out of the same Court, having day of *teste* and *return* as the said writ of *exigent* shall have directed and delivered of record to the Sheriff of the county where the defendant at the time of the *exigent* so awarded shall be dwelling, which writ of proclamation shall contain the effect of the same action." In criminal cases this writ must be delivered to the Sheriff *three months* before return thereof, 4 & 5 Will. 4, c. 22, s. 4, *quod vide*.

In making the proclamations the order prescribed by the statute must be followed; firstly, at the County Court; secondly, at the sessions; and thirdly, at the church door on a Sunday, immediately after divine service. This last proclamation at the church door must be made at least *one month* before the *quinto exactus*, *Taylor v. Waters*, 2 H. & Cr. 353. As to a return of proclamation made before the writ was in the Sheriff's hands, see *Volet v. Waters*, 3 D. & R. 55. If the first Sunday after the quarter ses-

sions be the return day of the writ the proclamation may be made on that day; it must be made at the door of the parish church of the last residence of the defendant in the county, *Roger v. Cooke*, 3 B. & Cr. 529.

After the exactions and proclamations have been properly made, a coroner is to be present in the County Court (the recorder does it in London) to pronounce judgment of outlawry against those that do not appear to the said writs at the *fifth* County Court or Hustung. The coroner taking the *exigent* in his hands, pronounces aloud:—

"Forasmuch as A. B. defendant, named in this writ of *exigent*, hath been called five county days, and hath not rendered his body to the Sheriff of this county of W., therefore we pronounce him outlawed."

The like for a woman defendant, using the word *waived* instead of *outlawed*.

After judgment of outlawry pronounced, the writ of *exigent* together with the judgment of outlawry is returned to the *custos breviarum*; the writ of proclamation must also be returned and filed with the clerk of the outlawries, who, on receiving the *exigent* and return thereto, will make out the *capias utlagatum*.

he should be outlawed if he did not appear; and if he did appear, then that you should take him, and cause him to be safely kept, so that you might have his body before us, [*or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer,"*] at Westminster, on to answer *A. B.* in an action of *debt*, at the suit of the said *A. B.* Therefore we command you, that in pursuance of the statute made in the thirty-first year of the reign of the Lady Elizabeth late Queen of England, you cause the said *C. D.* to be proclaimed upon three several days, according to the form of that statute; one of which proclamations shall be made at or near the most usual door of the church of the parish where the said *C. D.* is dwelling, that he render himself unto you, so that you may have his body before us, [*or in C. P. "before our justices," or in Exch. "before the barons of our said Exchequer,"*] at Westminster, at the aforesaid time, to answer to the said *A. B.* in the action aforesaid, and have there this writ. Witness, &c.

Writ of Foreign Proclamations (h).

Victoria, &c. to the Sheriff of greeting: Whereas by our writ we lately commanded our Sheriff of that he should cause *C. D.* late of to be demanded from County Court to County Court, [*or if in London, "from Husting to Husting,"*] until, according to the law and custom of England, he should be outlawed, if he did not appear; and if he did appear, then that he should take him and cause him to be safely kept, so that he might have his body before us, [*or in C. P. "before our justices," or in Exch. "before the barons of our Exchequer,"*] at Westminster, on , to answer to *A. B.* in an action of *debt*. Therefore we command you, that in pursuance of the statute made in the thirty-first year of the reign of the Lady Elizabeth, late Queen of England, you cause the said *C. D.* to be proclaimed upon three several days, according to the form of that statute; one of which proclamations shall be made at or near the most usual door of the church of the parish where the said *C. D.* is dwelling, that he render himself to our Sheriff of , so that he may have his body before us, [*or in C. P. "before our justices," or in Exch. "before the barons of our said Exchequer,"*] at Westminster, at the aforesaid time, to answer the said *A. B.* in the action aforesaid, and have there this writ. Witness, &c.

Return to the Writ of Proclamations.

By virtue of this writ to me directed, I have caused the within-named *C. D.* to be proclaimed at my County Court, held at *A.*, within my bailiwick, the day of , in the year within mentioned. I also caused him to be proclaimed at the general quarter sessions of the peace, held at *M.*, within my bailiwick, the day of , in the same year. And I likewise caused him to be proclaimed at the usual door of the parish church of *H.*, within my bailiwick (in which said parish the said *C. D.* lived), on Sunday, the day of , in the same year; that he may render himself unto me, [*or if a foreign proclamation, "to the Sheriff of , so that, &c."*], so that I may have his body before her Majesty's justices at Westminster at the time within mentioned, to answer the within-named *J. W.* of the plea within mentioned.

The answer of *A. B.*, Esquire, Sheriff.

(h) If directed to a different Sheriff it is called a "writ of foreign proclamations."

Capias Utlagatum (i).

Victoria, &c. to the Sheriff of greeting: We command you, that you do not omit by reason of any liberty of your county, but that you take C. D. late of being outlawed in your said county, [or "in the county of ," where the outlawry was,] on the day of last past, at the suit of A. B. in an action of debt, [if the writ issue into a county different from that in which defendant was outlawed, say, "as our Sheriff of returned to us, (or in C. P. 'to our justices,' or in Exch. 'to our barons of our Exchequer,') at Westminster, at a certain day now past,"] if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, [or in C. P. "before our justices," or in Exch. "before the barons of our said Exchequer,"] at Westminster, on , to do and receive what our said Court [or "justices," or "barons,"] shall consider of him in this behalf, and have there this writ. Witness, &c.

The like to the County Palatine of Lancaster.

Victoria, &c. to our Chancellor of our county palatine of Lancaster, or to his deputy there, greeting: We command you, that by our writ, under the seal of our said county palatine to be duly made and directed to the Sheriff of the same county, you cause the said Sheriff to be commanded that he do not omit by reason of any liberty of his county, but that he take C. D. late of , being outlawed [&c. proceed as directed in the preceding form,] if he shall be found in his bailiwick, and him safely keep,

(i) The *capias utlagatum* is either general or special; that is, against the person only, or against the person, lands and goods of the defendant; it may issue into any county without being a *testatum writ*, 1 Vent. 33; if the defendant be arrested on this writ the Sheriff shall discharge him upon an attorney's undertaking in writing to appear for the defendant and reverse the outlawry. (4 & 5 W. & M. c. 18, s. 4.) The plaintiff may consent to the defendant's discharge by supersedeas upon his entering an appearance. A bankrupt cannot be arrested hereon within the forty-two days given him by the 117th section of the 6 Geo. 4, c. 16, and if he be, the Court of Bankruptcy will discharge him, *Ex parte Hemsley*, 1 D. & C. 16; whether bankruptcy and certificate are good grounds of discharge does not seem quite clear; *semble*, not; *Beauchamp v. Tomkins*, 3 Taunt. 141; *semble* also that in such a case an appearance should be entered, and then a summary application made to the Court, *Summervil v. Watkins*, 14 East, 536; if a *feme sole* be waived, and she marry after the *exigent*, but before the outlawry, she may nevertheless be

taken on this writ, Barues, 321; 2 Wils. 127. If the defendant enters an appearance to the original action the property is never extended under the special *utlagatum*. In case of non appearance the Sheriff must summon a jury to inquire of the defendant's property real and personal, in possession and in action, and to appraise the same; witnesses must be subpœnaed as in other cases.

The Court will not on the 4 & 5 W. & M. c. 18, ss. 4 and 5, restore goods taken on a special *capias utlagatum*, 1 Tidd, 133. Where the Sheriff has seized and taken an inquisition, but there has been no *venditioni exponas*, the Sheriff is not entitled to poundage, *Graham v. Grill*, 2 M. & S. 294. A landlord is entitled to a year's rent, where goods are taken under this writ, *St. John's College v. Murcott*, 7 T. R. 259. An outer door may be broken open to take the defendant or his goods, *Rex v. Bird*, 2 Show. 87; *sed vide Cro. Eliz.* 908; it cannot be executed on a Sunday, *Osborne v. Carter*, Barnes, 319. Deer in a park cannot be extended on a *capias utlagatum* (10 Hen. 7, c. 7.)

so that he may have his body before us [*&c. conclude as in the preceding form.*]

Special Capias Utlagatum.

Victoria, &c. to the Sheriff of , greeting : We command you, that you do not omit by reason of any liberty of your county, but by the oath of good and lawful men of your said county you diligently inquire what goods and chattels, lands and tenements, *C. D.* late of , hath or had in your bailiwick, on the day of last past, or at any time afterwards, on which day he was outlawed in your county, [*or "in the county of ,"*] at the suit of *A. B.* in an action of *debt*, as you have lately returned to us, [*or in C. P. "to our justices," or in Exch. "to the barons of our Exchequer."*] [*If the writ issue into a county different from that in which defendant was outlawed, here say "as our Sheriff of returned to us, (or in C. P. 'to our justices,' or in Exch. 'to the barons of our Exchequer,') at Westminster, at a certain day now past,"*] and by their oath cause the same to be extended and appraised, according to the true value thereof ; and what you find by that inquisition take into your hands, and cause to be safely kept, so that you answer to us for the true value and issues thereof ; and having so extended and appraised the same, what you shall have done thereupon make known to us, [*or in C. P. "to our justices," or in Exch. "to the barons of our said Exchequer,"*] at Westminster, on , distinctly and plainly, under your seal, and the seals of those by whose oath you shall have made that extent and appraisement. And for that the said *C. D.* so being outlawed conceals himself, and runs up and down in your county in contempt of us, and in prejudice of our crown, as we are informed : We command you that you take the said *C. D.* wheresoever he shall happen to be found in your bailiwick, as well within liberties as without, and keep him safely, so that you may have his body before us, [*or in C. P. "before our justices," or in Exch. "before the barons of our said Exchequer,"*] at Westminster, at the aforesaid time, to do and receive what our said Court, [*or "justices," or "barons,"*] shall consider of him in this behalf, and have there this writ. Witness, &c.

Return thereto.

The execution of this writ appears in a certain inquisition to this writ annexed.

Inquisition thereon.

(to wit.) An inquisition indented, taken at in the county of , on the day of , in the second year of the reign of our sovereign lady Victoria, before me *G. A.* Sheriff of the said county, by virtue of the Queen's writ to me directed and to this inquisition annexed, upon the oath of *A. B.*, *C. D.*, *E. F.*, [*&c. set out the names of all the jurors,*] honest and lawful men of my bailiwick, who, being sworn and charged to inquire of all such matters and things as in the said writ are mentioned and contained, on their oath say, that *C. D.* in the said writ to this inquisition annexed, on , on which day he was outlawed in the said county, [*or "in the county of ," or "in London,"*] at the suit of *A. B.* in an action of *debt*, whereof he is convicted, was and yet is possessed of the goods and chattels following, that is to say, [*set out the goods,*] of the value of £ , as of his own proper goods and chattels, [*or if he have no goods, say, "had no goods or chattels in my bailiwick to the knowledge of the said jurors"*] : And the jurors afore-

said, upon their oath aforesaid, do further say, that the said *C. D.* on last past, (on which day he was outlawed as aforesaid,) was and yet is seised in his demesne as of fee [as the case may be], of and in [two messuages, two yards, and ten acres of land,] with the appurtenances, situate in the parish of , in the said county, now in the tenure and occupation of *T. R.*, of the yearly value of £ , in all issues beyond reprises : all and singular which said [goods and chattels, tenements and premises,] I the said Sheriff, by virtue of the said writ, on the said day of the taking of this inquisition, have taken and caused to be seized into the hands of our said lady the Queen, as by the said writ I am commanded : And the jurors aforesaid, upon their oath aforesaid, do further say, that the said *C. D.* on last past, (on which day he was outlawed as aforesaid,) or at any time afterwards, had not nor hath he any other or more [goods or chattels, lands or tenements,] in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I the said Sheriff as the jurors aforesaid, have severally set our respective seals to this inquisition, on the day and year and at the place aforesaid.

[Signatures and seals of the Sheriff and jurors.]

Venditioni exponas (k).

Victoria, &c. to the Sheriff of , greeting : Whereas by an inquisition indented taken before you, at in your county, on the day of , in the year of our reign, by virtue of our writ of special capias utlagatum, under the seal of our Court of King's Bench, [or "Common Pleas," or "Exchequer of Pleas,"] to you the said Sheriff directed, whereby we commanded you to inquire what goods and chattels, lands and tenements, *C. D.* late of had in your bailiwick, the day of then last past, or at any time afterwards, on which day he was outlawed in your said county, at the suit of *A. B.* in an action of debt, it was found by the oath of *E. F.* and other good and lawful men of your said county, that *C. D.* in the said writ named, on the day of then last, on which day he became outlawed, and on the day of taking the said inquisition, was possessed as of his own proper goods and chattels, of and in the several goods and chattels particularly mentioned and expressed in the schedule or inventory thereof hereunto annexed, which said goods and chattels were worth to be sold the sum of £ , all which said goods and chattels you the said Sheriff, by virtue of our said writ, on the day of taking the said inquisition, did seize and take into our hands, as by the said writ and inquisition taken thereupon, transcribed into our Court of Exchequer, and there remaining in the custody

(k) When the capias utlagatum and the Sheriff's return have been filed with the clerk of the exigents, a transcript of it is made out by him ; the transcript is then taken to one of the clerks in the Exchequer, who makes out the *venditioni exponas*, commanding the Sheriff to sell the goods ; a *levari facias* to extend his freehold land ; and a *sci. fa.* to recover debts due to the defendant, or a *sequestration*, as the case may be ; *Rex v. Hind*, 1 Dowl. 286.

If the proceeds of the sale do not

amount to 50*l.* the Court of Exchequer will, on motion, order the Sheriff to pay it over ; if they exceed 50*l.* a petition must be sent to the Lords of the Treasury, or by their leave a lease or grant of the Queen's right to levy the issues of the defendant's freehold lands may be obtained. After the warrant, and the Attorney-general's consent for the payment of the money in the hands of the Sheriff, the Court will, under circumstances, stay the making of an order for the payment ; *Rex v. Buchanan*, 1 C. & M. 195.

of our remembrancer, more fully appears: And we being desirous to be satisfied of the value of the said goods and chattels in the said inquisition mentioned, as is just, command you that you sell or cause to be sold the said goods and chattels, and every part thereof, for the best price that can be got for the same, and at the least for the said sum of £ , at which they were so appraised as aforesaid, so that you have the sum of money arising by such sale before the barons of our Exchequer at Westminster, the day of this instant , then and there to be paid to our use; and that you make then and there distinctly and plainly appear to our said barons all that you shall do concerning the premises; and have there this writ. Witness, &c.

By the said transcript, and by the barons.

Return thereto.

By virtue of this writ to me directed, I have caused the goods and chattels in the schedule hereunto annexed mentioned to be sold for £ , being the best price I could get for the same; which money I have before the barons of the Queen's Exchequer at Westminster, on the day within mentioned, ready to be paid to her Majesty's use, according to the command of this writ.

The answer of G. A. Sheriff.

Levari facias.

Victoria, &c. to the Sheriff of greeting: Whereas G. A. our late Sheriff of , by virtue of our writ of *capias utlagatum*, issuing out of our Court of King's Bench [or "C. P." or "Exch. of Pleas,"] at Westminster, against C. D. late of , who was outlawed in the county of [or "in London,"] on the day of , in the second year of our reign, at the suit of A. B. in an action of *debt*, to our said late sheriff directed, on the day of , in the year aforesaid, seized and took into our hands a certain [*here state the real property seized, as the case may be*]: which said &c. were found to be the property of the said C. D. as by the transcript of the said writ of *capias utlagatum*, and the return thereof, and of a certain inquisition thereupon taken, certified unto our Exchequer, and there in our custody remaining, more fully appears: Now we, being desirous to be satisfied of the, &c. from the said time of taking thereof into our hands, and which have not been answered to us, and also, &c. with all the speed we can, as is just, do command you that you omit not by reason of any liberty of your county, but that you enter the same, and cause to be raised, collected, and levied the said last-mentioned, &c. and also as the same shall from time to time become due as aforesaid: And have the monies which you shall so cause to be raised, collected, and levied, before the barons of our Exchequer at Westminster, on , to be then and there paid to our use; and have there this writ. Witness, &c.

OUTLAWRY ON FINAL PROCESS.

The main distinguishing features between outlawry on *mesne* and *final* process are—that on final process no writ of proclamation is required; and that if the defendant be arrested on the *capias utlagatum* he must remain in custody until the outlawry

Outlawry
on final process.

How distinguished
from that on
mesne process.

be reversed (l); the first step on final process is of course a ca. sa. and not a summons, but after the return of "*non est inventus*" to the ca. sa. the proceedings are exactly the same, and therefore need no comment.

OUTLAWRY ON CRIMINAL PROCESS.

So much information is conveyed to us in the report of the case of "*The King v. Yandell (m)*," that we consider it best for all practical purposes to transcribe the assignment of error and Lord Kenyon's judgment.

Assignment
of errors.

Assignment of Error. "And hereupon the said *J. Y.*, *J. Y.*, and *J. Y.* come in their proper persons and severally say that in the record and process, and also in the publication of the aforesaid outlawry, there is manifest error in this; that the said *J. Y.*, *J. Y.*, and *J. Y.* are alleged to be a fifth time demanded and outlawed on the 19th day of May in the thirtieth year of the reign of our lord the now King, when it appears by the writ of proclamation, which is alleged to have issued on Thursday the 25th day of March in the thirtieth year aforesaid, and the proclamations returned thereon, that they the said *J. Y.*, *J. Y.*, and *J. Y.* had a day given to render themselves to the Sheriff, so that he might have their bodies before the justices therein named, until the assizes and general session of oyer and terminer and gaol delivery, holden for the county of *S.* next after the 18th day of April, in the thirtieth year aforesaid, being the 9th day of August, in the thirtieth year aforesaid; therefore in that there is manifest error. There is also error in this, that the writ of exigent appears to have issued contrary to the statute in that case made and provided against *J. Y.*, who is only charged as accessory after the fact to a felony alleged to have been committed by *J. Y.* and *J. Y.*, and appears to be outlawed by the same judgment as that whereby the said principals are outlawed; whereas by the law of the land none shall be outlawed as accessories until the principals be attainted, but their exigent shall remain until such principal be attainted by outlawry or otherwise; therefore in that there is manifest error. There is also error in this, that the writ of *capias* which is alleged to have issued on Monday the 28th day of July, in the twenty-eighth year of the reign of our said lord the King is not return-

Second
error.

(l) *Wilke's case*, 4 Burr. 2540.

(m) *Rex v. Yandell*, 4 Term Rep. 533.

able as the statute in that case made and provided directs ; nor does it appear that there is comprised therein any command to the Sheriff to cause to be seized the chattels of the said *J. Y.*, *J. Y.*, and *J. Y.*, and safely to keep them till the day of the said writ returned, as by the law of the land is required ; neither is it alleged that the said *J. Y.*, *J. Y.*, and *J. Y.* did not appear before the exigent was awarded, as by the law of the land ought to have been alleged ; therefore in that there is manifest error. There is also error in this, that it is not expressly alleged that the writs of proclamation or either of them were or was delivered to the said Sheriff three months before the return of the same, as by law it ought to have been alleged ; therefore in that there is manifest error. There is also error in this, that the said writs of proclamation do not appear to be issued or executed as the statute in that case made and provided requires ; therefore in that there is manifest error. There is also error in this, that it is not alleged in the returns to the said writs of proclamation, that the said *J. Y.*, *J. Y.*, and *J. Y.* did not, after the making of each of the said several proclamations, required by the said writs, appear and render themselves to the said Sheriff, as by the law of the land it ought to have been alleged ; therefore in that there is manifest error. Wherefore the said *J. Y.*, *J. Y.*, and *J. Y.* severally pray that the outlawry aforesaid, for the errors aforesaid, and other the errors appearing in the record and process aforesaid may be reversed, and held for nothing ; and that they may severally be restored to the common law, and to all which they have lost by occasion of the outlawry aforesaid. And *J. T.* esq., coroner and attorney of our present sovereign lord the King, in the Court of our said lord the King, before the King himself, who for our said lord the King in this behalf prosecuteth, being present here in Court in his proper person, and having heard the matters aforesaid above assigned for error, for our said lord the King saith that in the record and process, and also in the publication of the aforesaid outlawry, there is not any error ; therefore he prayeth that the said Court of our said lord the King now here may proceed to examine as well the record and process, and also the publication of the aforesaid outlawry, as the matters above assigned and alleged for error, and that the outlawry aforesaid may in all things be affirmed, &c."

"Lord Kenyon, Ch. J. delivered the unanimous opinion of

the Court as follows:—The objections made to this outlawry on the first argument were divided and subdivided into seventeen in number ; many of them were so fully answered at the bar, that the counsel for the prisoners upon the second argument rightly confined himself to the seven following objections, of which I shall take notice in the order in which they were made. 1st. That the prisoners have a day given to them upon the record to appear after the outlawry was pronounced. 2dly. That the writ of exigent is contrary to the statute of Westm. 1, c. 14. 3dly. That the second writ of *capias* is bad, because it does not contain a command to seize the goods of the prisoners. 4thly. That it is not alleged that each writ of proclamation was delivered to the Sheriffs three months before the return of it. 5thly. That the writs of proclamation were neither issued, or executed, according to the statute. 6thly. That it is not alleged after each proclamation that the prisoners did not appear and render themselves ; and 7thly. That the names of the coroners, by whom the outlawry was pronounced, are not subscribed to this record.

“ As to the first objection ; if it were well founded in fact, we think it would have been fatal, according to the judgment of this Court in the case of *The King* against *Barrington*. But the two cases are not alike ; and it will be sufficient to state the record only, to show the material distinction between them, and to prove it to be as clear that these prisoners had not a day given to them to appear after the outlawry, as it was that *Barrington* had such a day given to him. In *Barrington*’s case the prisoner was outlawed on the 21st February ; and the writ of proclamation required the Sheriffs to proclaim him, so that he should be before the justices of the peace at the general sessions of the peace to be holden for the county aforesaid next after the first day of February next ensuing ; and the return by the Sheriffs to that writ was that he had proclaimed the said *George Barrington*, that he should be before his Majesty’s justices of the genrral sessions of the peace last within mentioned. The next sessions of the peace were holden on the 25th February ; so that by the terms of the writ, and by the proclamation too, the prisoner had a day given to him to appear till the 25th February ; and if he had appeared on that day, he would have complied with the requisition of the writ, and have saved his default. But he was outlwd before that day came, viz. on the

21st February; and upon that ground the Court held the outlawry bad. In the present case the writs of proclamation were issued by the Courts of oyer and terminer, requiring proclamations to be made that the prisoners render themselves to the Sheriff, so that he might have their bodies before the justices, &c. at the next sessions of oyer and terminer, to be holden for the said county; and the prisoners were proclaimed at the proper times and places before the return of those writs to surrender themselves to the Sheriff. Under these writs it was the duty of the prisoners to render themselves to the Sheriff before the fifth County Court; or in default of doing so, they stood liable to the outlawry. It is impossible to allow this objection, without saying in broad terms that an outlawry (which is a legal process, sanctioned by all the authorities in the law, both ancient and modern, and interwoven in the constitution itself,) never can legally exist in this country. By law the outlawry must be completed before the return of the writ of exigent. That writ requires the Sheriff to call the party from County Court to County Court, till he is outlawed: and if the Sheriff neither bring in the party on a caption or render before the outlawry, or return a complete outlawry at the time that the writ of exigent is returnable, he has not complied with the writ, or done his duty. In this case, therefore, no day was given to the prisoners to surrender themselves to the justices on the return of the exigent and proclamation, but they were required to surrender themselves to the Sheriff; which is the accurate and correct mode of proceeding.

“The second objection is that the writ of exigent is contrary to the statute of Westm. 1, c. 14. The statute of 3 Edw. 1, c. 14, enacts that no accessory be outlawed until he that is appealed of the deed be attainted. But that statute relates solely to the case of the accessory, and in no wise applies to a proceeding against the principal. The statute mentions the case of an appeal only; but it has been determined that it extends to indictments as well as to appeals. And in Bro. tit. Exigent, pl. 44, it is said that if it appear in the writ of appeal that one is principal and others accessories in an appeal against three, there the exigent shall not issue against the accessories, until the principal be outlawed. But if it do not appear by the writ, then it is not error, though the exigent issue against all together. This authority relates to the case of the accessory only,

and by no means proves that, if the process be erroneous as to the accessory, it shall be so in respect of the principal also. Another case quoted in behalf of the prisoners was 1 Bulstr. 74; where in an appeal against several, some as principals, and one as accessory, the accessory pleaded that there was no such person in *rerum naturâ* as one of the principals; and that was holden to be a good plea. This case proves only that in an appeal an accessory may plead the misnomer of the principal; and if by any means an end be put to the indictment or appeal against the principal, most unquestionably it must fail as against the accessories also. In this point there seems to be a distinction between an appeal and an indictment; for 2 H. H. P. C. 201, says, if an appeal be brought against a man as accessory to two, he must be proved accessory to both: but if he be indicted as accessory to two, he may be convicted on evidence which proves him accessory to one only. And in 2 H. H. P. C. 177, it is expressly laid down that, if several persons be indicted for one offence, misnomer or want of addition of one quashes the indictment only against him; and the others shall be put to answer; for they are in law as several indictments; and so in trespass. If the indictment be considered as several against each defendant, which we think it must be, this objection, though it is material, and has already been allowed in the case of the accessory, cannot avail the principals. And so it is laid down by Serjt. Hawkins in b. 2, c. 27, s. 130; who says, 'that it seems to be agreed that wherever some of the defendants are expressly charged as principals, and others as accessories, before the award of the exigent, the outlawry of those charged as accessories cannot be but reversible.' I lay out of the case all the authorities, quoted relative to civil actions, because they proceed on a very different ground. There the judgment given for damages is entire; and if it cannot be supported against all, it must be reversed *in toto*; because the Court cannot sever the damages, and say that each defendant shall be severally liable for his proportion of them. But even in those cases, if different parts of a judgment can be severed, the Court will reverse it in part, and affirm it for the residue; as appears by the case quoted from 2 Rol. Rep. 136, and many more modern determinations.

"The third objection is, that the second writ of *capias* is bad, because it does not contain a command to the Sheriff to seize

the goods of the prisoners, which it was argued was required by the statute, for the purpose of giving the party notice. This objection is founded on the stat. 25 Ed. 3, st. 5, c. 14, which enacts 'that after any man is indicted of felony before the justices in their sessions to hear and determine, it shall be commanded to the Sheriff to attach his body by writ, or by precept, which is called a *capias*: and if the Sheriff return that the body is not found, another *capias* shall be incontinently made returnable at three weeks after; and in the same writ it shall be comprised that the Sheriff shall cause to be seized his chattels, and safely to keep them till the day of the writ returned. And if the Sheriff return that the body is not found, and the indictree cometh not, the exigent shall be awarded, and the chattels shall be forfeit, as the law of the crown ordaineth: but if he come and yield himself, or be taken by the Sheriff before the return of the second *capias*, then the goods and chattels shall be saved.' If this statute were ever intended to apply to a Court of assizes, and oyer and terminer, to be sure the language of it is very incorrect: for when an act mentions justices in their sessions, the natural and most obvious meaning of those words is the justices of the peace in their general or quarter sessions. But the provision made by it is totally incompatible with a Court of assizes, and oyer and terminer; for there never was a period in the annals of this country, when that Court sat from three weeks to three weeks. Lord Ch. J. Hale, in 2 Pl. Cr. 195, considers the statute as inapplicable to this Court or to any Court where the justices sit by commission; for (says he) the second *capias* is to be returnable at three weeks after, which may be out of term, or after the sessions of the justices are ended. We concur in this opinion; and we think it is strongly fortified by the stat. of 8 Hen. 6, c. 10, and the construction which Lord Ch. J. Hale has put upon it. That act consists of two parts; 1st. That a second *capias* shall issue where the party is in a foreign country; 2dly. If the party be conversant in the county where he was indicted at the time of the felony, the process shall be as hath been used before this time; which words Lord Ch. J. Hale renders thus, the process shall be as it was at common law. In the same page Lord Ch. J. Hale states it, as clear and unquestionable, that at that day the process in case of an indictment of any felony was only one *capias*, and then an exigent. If so, undoubtedly the stat. of

25 Edw. 3, which requires two capiases could not extend to all Courts of oyer and terminer ; and if it do not, it must necessarily be confined to the sessions of the justices of the peace. Hawkins makes a distinction as to the process upon indictments and appeals for offences which are or are not capital : but I shall not pursue that inquiry farther, because we do not feel ourselves called upon to say in this case whether two capiases were necessary, or whether one only was sufficient. Lord Ch. J. Hale makes a quære as to the usage on the stat. of 25 Edw. 3. If that usage has been consistent with what we consider as the true and plain construction of the words of the statute, it will greatly fortify that opinion : if, on the contrary, the usage has been the other way, it will be incumbent on the Court, notwithstanding what is said by Hale, to see if the statute can be made consistent with it. All the precedents, which we have been able to find on this subject, are one way. In *The King v. Morley*, Trem. Ent. 280 ; in *The King v. Cranstoun*, and in *The King v. Barrington*, there was a second capias ; and in neither of them is there any command to seize the goods. *The King v. Morley* was a case of some authority beyond the mere precedent ; for it appears in 3 Keb. 125, that a writ of error was brought ; and though objections were taken to the indictment, yet none were made against the process. The words of the statute themselves, the precedents, and the authorities upon it, all concur that there is no weight in this objection.

“ The fourth objection is, that it is not alleged that the writ of proclamation was delivered to the Sheriff three months before the return of it. This objection was over-ruled by the Court upon the argument ; and it is not warranted in point of fact ; for it appears upon the record that the writ was delivered to the Sheriff on the 28th of December, and was not returnable until the 25th March, which allowed an interval of more than three lunar months, and is all that is required. It can only appear by the return of the Sheriff when the writ was delivered to him.

“ The fifth objection is, that the writs of proclamation were neither issued or executed according to the statute. The writ of proclamation requires ‘ one proclamation to be made in open Court in the said Sheriff’s county ; another at the general quarter sessions of the peace to be holden for the said Sheriff’s county ; and another at or near the most usual door of the parish church

of Brompton Ralph aforesaid, where they are inhabiting.' The return of the Sheriff to that writ is as follows; that 'at my County Court of Somerset holden at Ivelchester in and for the county of Somerset within written, on Wednesday, 27th January, 30th Geo. 3, I caused the first proclamation to be made in open Court in the said county, &c.' And afterwards to the second writ of proclamation, the Sheriff returned that 'at the general quarter sessions of the peace of our lord the King, holden for the county of Somerset, at the city of Wells, in the said county, on Wednesday the 14th April, 30th Geo. 3, I caused the second proclamation to be made in open Court, &c.; and that afterwards at the most usual door of the church of the parish of Brompton Ralph within mentioned, upon Sunday the 18th April, 30th Geo. 3, immediately after divine service and sermon, (one month at least before the within-named prisoners (mentioning them by name) were a fifth time called by virtue of a second writ of exigent of our said lord the King) I caused the third proclamation to be made &c.' The expressions in the writ, which have been objected to, are 1st. That it requires one proclamation to be made in open Court in the Sheriff's county; and the statute 31 Eliz. c. 3, requires it to be made in the open County Court. 2dly. That it requires another proclamation to be made at the general quarter sessions of the peace to be holden for the said Sheriff's county; and the words of the statute are that one other of the said proclamations shall be made at the general quarter sessions of the peace in those parts where the party defendant at the time of the exigent awarded shall be dwelling. 3dly. That it does not appear that the prisoners were dwelling in the town or place, at the church door of which the third proclamation was made. These objections are very nice and critical; and the answers to them lie within a very narrow compass. 1st. The open Court in the Sheriff's county is the open County Court; the Sheriff has no Court but the County Court: and the case cited from 1 Vent. 108, makes against the objection rather than for it; for the return of the proclamation was '*ad comitat. meum tent. apud* (such a place) *in com. praedict.*;' and no objection was made to the words '*ad comitat. meum*:' but the outlawry was reversed for want of the words '*pro comitatu*,' which objection does not hold in the present case. It was admitted at the bar on the second argument that this writ was agreeable to the precedents; and I will men-

tion some which tend to show that, if the writ had been more general than it is, yet it would have been good. In *The King v. Morley* the writ of exigent was to demand him from county to county; and the return was 'at our county of the same city.' In Lilly's Ent. 460, the writ of proclamation is to be proclaimed on three several days according to the statute, whereof let one proclamation be at or near the most usual door of the church of the parish of *A.*, where the said defendant is dwelling, &c. without mentioning any place where the other two should be. In Thes. Brev. 173, the exigent is to demand him from county to county: and there are two precedents of writs of proclamation the same as that in Lilly's Entries. So in Clift's Entries, 384, Dalt. Sher. and Rast. Entr. all the precedents are '*ad. com.*' In Dalt. Sher. 229, there are three precedents of the returns of the election of members of parliament; and in p. 230, one of the election of a coroner; all of which are in *pleno comitatu meo*. And in *Cranstoun's case*, the writ was exactly in the same words as the present. As to the second objection; the words 'those parts where the party defendant shall be dwelling' can mean nothing but county, riding, or division; and no other construction was attempted to be put upon them at the bar. The third objection is not applicable to the writ; because that expressly states that the prisoners are inhabiting in the parish of Brompton Ralph: but the return only states that the Sheriff proclaimed them at the church door of the parish of Brompton Ralph, without adding the words where they are inhabiting. But we are of opinion that this return is sufficient; for the Sheriff has done every thing which he was required by the writ to do, and has made a full return of that. If it appear on the record that the prisoners were inhabiting in the parish, that is sufficient; and here it is expressly so alleged in the writ. It was observed on the first argument that the indictment does not describe the prisoners as being then of that parish, but only as late of that parish. After the express averment in the writ which I have mentioned, the case is not open to that objection: but if the case were otherwise, there is no foundation for it. The constant form of indictments is to describe the prisoner late of such a place; and both Hawkins and Hale say the writ of proclamation shall go according to the place, of which he is so described.

"The sixth objection is, that the Sheriff has not added to his

return to each proclamation that the prisoners did not appear. It is not necessary that he should do so. The passage cited from 2 Hale's P. C. 204, speaks of the exigent only ; and in the return to that writ it is necessary to state that they did not appear. The exigent is the writ, which commands the Sheriff to take the prisoners ; and the proclamation is merely a public notice of what is doing in another place. The precedents are against this objection also ; and there is no authority in support of it. In truth, these last four objections were rather hinted at than relied upon in the second argument ; and that is as much as they deserved.

“The last objection is, that the names of the coroners, by whom the outlawry was pronounced, are not subscribed to this record ; and 2 Hale's P. C. 204, and 2 Rol. Abr. 802, were quoted upon this point, where it is said to have been determined that the names of the coroners must be subscribed to the judgment of outlawry, or, in the words of Rolle, be put upon the record ; or else it is error. By law it is necessary that it should appear by whom the outlawry was pronounced, and that they had authority to pronounce that judgment, with the exception perhaps of an outlawry in the city of London ; in which case it was determined in *The King v. Garrard*, Cro. Jac. 531, that an outlawry returned in the general words, ‘*ideo utlagatus est*,’ was good ; the Court taking notice that there was not any coroner, but the mayor for the time being was perpetual coroner ; and that the course was not to return there ‘*per judicium coronatorum*’ but generally ‘*ideo utlagatus est*.’ From that case it is manifest that the law requires no more than what I have already stated, namely, that the names of the persons by whom the outlawry was pronounced, and that they had authority so to do, or in other words that they were coroners, should appear upon the record. But the point does not rest merely on inference from that case ; for there are two other cases in the same book, which show clearly what is required. The first is *Sir Edmund Button v. Awdley*, Cro. Jac. 521 ; where the outlawry was reversed because it was not said to be *per judicium coronatorum* ; the other is *Patrick's case*, Cro. Jac. 528, where it was stated that the defendant was outlawed *per judicium coronatorum*, but the record did not show the name of any of the coroners ; and for that cause it was reversed. It never was

contended that the coroners must sign the judgment with their own hands. In ancient times it was hardly possible ; and there is no case in the law in which it is essential that the judge of a Court should sign the judgment with his own hand. Besides, if that had been necessary, it could not have been done on this record, which is not the record of the coroners, but of the Court of oyer and terminer, made up from the returns of the Sheriff, stating what had in fact been done under the mandates of the Court. The record in the present case states that 'by the judgment of Daniel Follett Scadding, gentleman, and Peter Layng, gentleman, coroners of our said lord the King of the said county of Somerset, and according to the laws and customs of England, the prisoners are and each of them severally is outlawed.' Therefore it does appear on the record by whom the outlawry was pronounced, and that they were the coroners, and consequently had authority to pronounce that judgment. For these reasons we are all of opinion that judgment must pass on the prisoner at the bar."

SECTION V.

SPECIAL COUNTY COURT FOR THE ELECTION OF A CORONER.

Sheriff's
duties.

In this Court the Sheriff is the returning officer, and the person upon whom mainly devolve the active duties of the election :

Coroners (*a*), or *Crowners*, are of three kinds.

Coroners (*b*) :—1. *Virtute officii*.

2. *Virtute chartæ sive commissionis*.

3. *Virtute electionis*.

The first two divisions of the subject we pass over unnoticed, and simply because the Sheriff has no interest in their appointment, coroners *virtute electionis* only falling within the scope of his authority. They are such as are by statute Westminster 1,

(*a*) As to his antiquity see *Mirr.* 1, s. 3 ; 4 *Inst.* 271 ; 2 *Hawk. P. C.* 28, c. 1, s. 5.

(*b*) The Lord Chief Justice of the Queen's Bench is *virtute officii* prin-

cipal coroner of *England* ; and may, if he please, exercise the office in any part of the realm. The *other* judges of the same Court are sovereign coroners ; 4 *Co. Rep.* 57 ; 4 *Inst.* 173.

c. 10, and statute 28 Edw. 3, c. 6, eligible and chosen in the full counties by the commons of the same counties.

By statute Westm. 1, c. 10, it is enacted, "that through all shires sufficient men shall be chosen of the most loyal and wise knights (*d*), which know, will, and may best attend upon such offices, and which lawfully shall attach and present pleas of the crown." And by 14 Edw. 3, st. 1, c. 8, it is enacted, "that no coroner be chosen unless he have *land* (*e*) *in fee* sufficient in the same county, whereof he may answer to all manner of people."

As the office is by election it does not determine by the demise of the crown (*f*); hence also if they prove insufficient to answer the fines, &c. the county, as the *superior*, shall answer for a defaulter (*g*).

In some counties there are two coroners, in others more; in the counties in Wales and Chester two (*h*).

London (*i*), the Cinque Ports, and the Dean and Chapter of Westminster have their own coroners; in the Stannaries in Cornwall the wardens are coroners (*k*); the Bishop of Ely has the appointment of the coroners in the Isle of Ely (*l*). The coroner of the *Admiralty* is appointed by the Lord High Admiral (*m*); of the *Verge*, by the Lord High Steward for the time being (*n*).

If there be above two coroners in the county and a writ is directed *coronatoribus*, and one dies, yet as long as the plural number remains a return by the coroners is good; but if there be but one survivor he cannot execute the writ and return it until another be made; but if there be two coroners in a county or more, one may execute the writ, as in case of an exigent, but the return must be in the names of the *coronatores*.

Upon the death of the coroner or other cause of removal the first step to be taken by the candidate, who wishes to apply for the writ, is to have an affidavit of the death of the late coroner,

Qualification.

Does not determine on demise of the crown.

County answerable for a defaulter.

Number of coroners.

Places that have their own coroners.

Direction, execution, and return of writs.

How to proceed.

(*d*) For many ages past it has been usual to elect persons of lower degree than that of a knight; 2 Hawk. P. C. c. 9, s. 3.

(*e*) He should have some *land* in fee as well as a person eligible for the office of Sheriff, but its sufficiency is undefined either by common or statute law.

(*f*) Dyer, 165 a.

(*g*) 2 Inst. 174.

(*h*) Hale's P. C. 56.

(*i*) The Mayor of London is coroner by 18 Edw. 4.

(*k*) 2 Hale, 54.

(*l*) Hen. 7; see also 35 Hen. 8, c. 26; 9 Co. 29 b.

(*m*) 33 Hen. 8, c. 12; 2 Hale, 54.

(*n*) *Ibid.* 2 Hale, 56.

which is to be sworn before a Master in Chancery in town, or if in the country, before a Master Extraordinary in Chancery.

Affidavit. In Chancery.

A. B. of the parish of *M.*, in the county of *W.*, gentleman, maketh oath and saith, that *R. B.*, Esquire, late one of the coroners of the said county, departed this life on or about the day of last past. Sworn, &c. *A. B.*

The affidavit when sworn is annexed to a petition of freeholders, who subscribe the same.

Petition. To the Right Honourable the Lord High Chancellor of Great Britain. The humble petition of us whose names are hereunto subscribed, on behalf of ourselves and others, freeholders of the county of *W.*

Sheweth,

That *R. B.*, Esquire, late one of the coroners for the said county of *W.*, departed this life the day of , as by the affidavit annexed appears. And that it will be for her Majesty's service and general good of the said county, to have a proper person elected coroner in the room and stead of the said *R. B.* deceased.

Your petitioners therefore most humbly pray your lordship's order that the curitor of the said county do make out a writ de coronatore eligendo for the election of a new coroner for the said county of *W.*, in the room and stead of the said *R. B.* deceased. And your petitioners shall ever pray, &c.

This petition is to be subscribed by freeholders only.

The petition
where to be
lodged.

The petition and affidavit is to be lodged with the clerk of the crown in Chancery, and with whom the agent signs an undertaking prepared agreeable to the writ, engaging "that due notice shall be given in all the market towns of the time and place for the execution of the writ six days before the execution." The clerk gets the writ sealed, which is to be delivered to the Sheriff.

Writ de Coronatore Eligendo.

Victoria, &c. to the Sheriff of *W.*, greeting: forasmuch as *A. B.* Esq., late one of the coroners of your county is deceased, [or as the case may be,] we command you that if it be so, then in your full county, by the assent of the same county, you cause another coroner to be chosen in the place of the said *A. B.* (who having taken the oath as the manner is,) may thereupon do and keep those things which concern the office of a coroner in the said county, and you shall cause such a one to be chosen as best knoweth and intendeth that office; and certify unto us his name. Witness ourself at Westminster, the day of , in the second year of our reign (*p*).

(*p*) This is called a writ close, because it is close folded up and the wax put round it—in a writ patent, though

the writ is folded up, the wax is not put round it.

For proper instructions regarding the execution of this writ, the Sheriff must always refer to the statute of 58 Geo. 3, c. 95, entitled "*An Act to regulate the Election of Coroners for Counties,*" (10 June, 1818.)

"Whereas there are no sufficient regulations for the election of coroners for counties, Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, upon every election to be made of any coroner or coroners of any county in England and Wales, the Sheriff of the county where such election shall be made shall hold his County Court for the same election at the most usual place or places of election of coroners within the said county, and where the same have most usually been held for forty years last past, and shall there proceed to election at the next County Court, unless the same fall out to be held within six days after the receipt of writ de Coronatore eligendo, or upon the same day; and then shall adjourn the same Court to some convenient day, not exceeding fourteen days, giving ten days' notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be demanded for determination thereof, then the said Sheriff, or in his absence his Under-sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said poll, in some public place, by the same Sheriff, or his Under-sheriff as aforesaid in his absence, or others appointed for the taking thereof as aforesaid; and every such poll shall commence on the day upon which the same shall be demanded, and be duly and regularly proceeded in from day to day (Sunday excepted) until the same be finished; but so as that no poll for such election shall continue more than ten days at most (Sunday excepted), and the said poll shall be kept open seven hours at the least each day, between the hours of nine in the morning and five at night: and for the more due and orderly proceeding in the said poll, the said Sheriff, or in his absence his Under-sheriff, or such as he shall depute, shall appoint such number of clerks as to him shall seem meet or convenient for the taking thereof; which clerks shall all take the said poll in the presence of the said Sheriff or his Under-sheriff, or such as he shall depute; and before they

Sheriff to hold County Court for election of coroner at usual place.

If election not determined on view, then to proceed to take a poll.

Commencement and duration of poll.

Poll clerks appointed and sworn.

begin to take the said poll, every clerk so appointed shall by the said Sheriff or his Under-sheriff, or such as he shall depute as aforesaid, be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and the place of his abode and freehold, and the name of the occupier thereof, and for whom he shall poll, and to poll no freeholder who is not sworn, if required to be sworn by the candidates or either of them, and which oaths of the said clerks, the said Sheriff or his Under-sheriff, or such as he shall depute, are hereby empowered to administer; and the Sheriff, or in his absence his Under-sheriff as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each candidate, to be inspector of every clerk who shall be appointed for taking the poll; and every freeholder, before he is admitted to poll at the same election, shall, if required by the candidates or any of them, first take the oath hereinafter mentioned, which oath the said Sheriff by himself or his Under-sheriff, or such sworn clerk by him appointed for taking the said poll as aforesaid, is hereby authorised to administer; *videlicet*.

Inspector of
poll clerk
appointed.

Freeholder,
if required,
sworn be-
fore he
polls.

Oath of
qualifica-
tion for vote.

“ ‘ You swear, [*or, being one of the people called Quakers, you solemnly affirm,*] that you are a freeholder of the county of _____, and have a freehold estate, consisting of _____, lying at _____, within the said county; and that such freehold estate has not been granted to you fraudulently, on purpose to qualify you to give your vote at this election; and that the place of your abode is at _____, [*and if it be a place consisting of more streets or places than one, specifying what street or place;*] that you are twenty-one years of age, as you believe, and that you have not been before polled at this election.”

Perjury and
subornation
of perjury.

And in case any freeholder or other person taking the said oath or affirmation hereby appointed to be taken by him as aforesaid shall thereby commit wilful and corrupt perjury, and be thereof convicted, and if any person shall unlawfully or corruptly procure or suborn any freeholder or other person to take the said oath or affirmation in order to be polled, whereby he shall commit such wilful and corrupt perjury, and shall be thereof convicted, he and they for every such offence incur such pains and penalties as are declared in and by two acts of parliament, the one made in the fifth year of the late Queen Elizabeth, intituled “ *An Act for Punishment of such as shall procure or commit any wilful Perjury;*” and the other made in the second year of his late Majesty’s King George the Second, intituled “ *An Act for the more effectual preventing and further Punishment of*

5 Eliz. c. 9.

2 Geo. 2,
c. 25.

Forgery, Perjury, and Subornation of Perjury, and to make it Felony to Steal Bonds, Notes, or other Securities for Payment of Money;" and by any other law or statute now in force for the punishment of perjury or subornation of perjury.

" II. And be it further enacted, that no person or persons shall be allowed to have any vote at such election for coroner or coroners of any county in England and Wales as aforesaid, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of such estate; but that the mortgagor or cestuique trust in possession shall and may vote for the same estate, notwithstanding such mortgage or trust; and that all conveyances of any messuages, lands, tenements, and hereditaments, in order to multiply voices, or to split or divide the interest in any houses or lands among several persons, to enable them to vote at elections for a coroner of any county as aforesaid, are hereby declared to be void and of none effect.

Mortgagor and cestuique trust to vote, unless trustee or mortgagee be in possession.

" III. And be it further enacted, that all the reasonable costs, charges, and expenses, the said Sheriff, or his Under-sheriff, or other deputy, shall expend or be liable to in or about the providing of poll books, booths and clerks, (such clerks to be paid not exceeding one pound and one shilling each per diem,) for the purpose of taking the poll at any such election, shall be borne, sustained, and paid by the several candidates at such election, in equal proportions."

Expenses of Sheriff and poll clerks to be paid by the candidates.

One of the first matters to be attended to by the Sheriff is *the place* of election; it is to be "at the most usual place or places of election of coroners within the said county, and where the same have most usually been held for forty years last past." The statute, it will be observed, not only designates the place by the term, "*usual place*," but proceeds to define the import of them, as they might otherwise be indefinite as to time and limitation of user; to hold the Court at any other place is an indictable offence, and the election is void (*r*).

Place of election.

As to time, the election is to be had by the Sheriff at the next County Court next after the receipt of the writ *de coronatore eligendo* (*s*); unless the next County Court fall out to be held

Time of election.

(*r*) Dyer, 151; Keilw. 192; 2 Saund. Rep. 290; 2 Hale, 70; 2 Hawk. P. C. 91; 2 Inst. 71.

(*s*) In the former case a week's no-

tice, as formerly, would suffice, it seems; in the latter there must be *ten days' notice*.

within six days after the receipt of the writ, or upon the same day ; should either be the case he shall adjourn the same Court to some convenient day, not exceeding fourteen days, giving ten days' notice of the time and place of election.

Notice of Election.

The Sheriff of *W.* will proceed to the election of a coroner for the said county in the room of *A. B.* deceased at the County Court to be held at by adjournment (*t*) on Wednesday the day of next at ten o'clock in the forenoon of the same day, at which time and place the freeholders of the same county are desired to attend.

Robert Elliott, High Sheriff.

Commence-
ment of
election.

When the election commences (which must be forthwith, that is, on the same day a poll is demanded,) the bailiff makes the following proclamation :—

Proclama-
tion.

"All manner of persons who have any thing to do in this election of coroner for the county of *W.* in the room of *A. B.* deceased [or "removed," or "resigned," as the case may be,] let them draw near and give their attendance."

When poll
demanded,
it cannot be
denied.

When a *poll* is demanded the Sheriff cannot deny it, any more than he can deny a *scrutiny* into the polls upon a suggestion that non-freeholders have polled (*u*).

Voters' qua-
lification.

The two essentials of a voter's qualification are, first, a *freehold estate* (*x*) (but as to quantity or value undefined by common or statute law) ; second, *majority in age* ; the oath of qualification is prescribed by the statute itself.

Close of the
poll.

After the close of the poll (within a reasonable time after five o'clock on the tenth, or, if Sunday be the tenth, then on the eleventh day, unless sooner determined by consent,) let the bailiff proclaim aloud thus :

"If any one can gainsay why *Richard Wilson*, Gent., should not be appointed one of the coroners for this county, let him come forth and he shall be heard, otherwise the Sheriff of Westmoreland will declare the said *Richard Wilson* duly elected."

Allegiance,
supremacy,
and abjura-
tion, by
whom ad-
ministered.

Then let the Sheriff administer to the coroner elect (except

(*t*) The word *adjournment* is in the notice because the vacancy is always declared at a former Court. The notice should be sent to all the market towns within the county, also affixed on all the church doors.

(*u*) 1 Ventr. 206 ; 2 Ventr. 25 ; Freem. 17 ; Lev. 50.

(*x*) 2 Hawk. P. C. c. 9, s. 10 ; 2 Roll. Abr. 121 ; 2 Inst. 99 ; by sect. 11, mortgagor and cestuique trust to vote, unless trustee or mortgagor be in possession.

he be a Roman Catholic) the oath of allegiance, supremacy and abjuration. If a Roman Catholic, administer instead thereof the declaration contained in the 10 Geo. 4, c. 7, s. 2, and the—

Oath of Office (y).

You shall swear that you will well and truly serve our sovereign lady the Queen's Majesty and her liege people in the office of a coroner, and as one of her Majesty's coroners of this county of *W.*, and therein you shall diligently do and accomplish all and every thing and things appertaining to your office, after the best of your cunning, wit and power, both for the Queen's profit and for the good of the inhabitants of the said county, taking such fees as you ought to take by the laws and statutes of this realm, and not otherwise.

Oath of office.

So help you God.

Return to Writ de Coronatore Eligendo.

By virtue of this writ to me directed in my full County Court held by adjournment at *A.* in the county of *W.* on the day of in the year within written, by the assent of the same county, I have caused *Richard Wilson* to be chosen coroner in the place of the within-named *A. B. deceased*, which said *Richard Wilson*, as the manner is, hath taken corporal oath [or "made affirmation," or "declaration,"] to do and keep those things which to the office of coroner in the said county doth belong as I am within commanded.

The answer of Henry, Earl of Thanet, High Sheriff.

SECTION VI.

SPECIAL COUNTY COURT FOR THE ELECTION OF KNIGHTS OF THE SHIRE.

Before entering upon the Sheriff's duties in this Court we think it best to set out at length the statute to which reference must always be had for information.

REFORM ACT (a).

An Act to amend the Representation of the People in England and Wales.

[7th June, 1832.]

12. And be it enacted, that in all future parliaments there shall be six knights of the shire, instead of four, to serve for the county of York, (that is to say,) two knights for each of the three ridings of the said county, to be elected in the same manner, and by the same classes and descriptions of voters, and in respect of the same several rights of voting, as if each of the three ridings were a separate county; and that the court for the election of knights of the shire for the North Riding of the said county shall

Six knights of the shire for York-shire; two for each riding.

(y) As to *sacrament* repealed by 9 Geo. 4, c. 17.

(a) 2 Will. 4, c. 45.

be holden at the city of York, and the court for the election of knights of the shire for the West Riding of the said county shall be holden at Wakefield, and the court for the election of knights of the shire for the East Riding of the said county shall be holden at Beverley.

Four knights of the shire for Lincolnshire; two for the parts of Lindsey, two for Kesteven and Holland.

13. And be it enacted, that in all future parliaments there shall be four knights of the shire, instead of two, to serve for the county of Lincoln, (that is to say,) two for the parts of Lindsey in the said county; and two for the parts of Kesteven and Holland in the same county; and that such four knights shall be chosen in the same manner, and by the same classes and descriptions of voters, and in respect of the same several rights of voting, as if the said parts of Lindsey were a separate county, and the said parts of Kesteven and Holland together were also a separate county; and that the court for the election of knights of the shire for the parts of Lindsey in the said county shall be holden at the city of Lincoln, and the court for the election of knights of the shire for the parts of Kesteven and Holland in the said county shall be holden at Sleaford.

Certain counties to be divided, and to return two knights of the shire for each division.

14. And be it enacted, that each of the counties enumerated in the Schedule marked (F.) to this Act annexed shall be divided into two divisions, which divisions shall be settled and described by an Act to be passed for that purpose in this present parliament, which Act, when passed, shall be deemed and taken to be part of this Act as fully and effectually as if the same were incorporated herewith; and that in all future parliaments there shall be four knights of the shire, instead of two, to serve for each of the said counties, (that is to say,) two knights of the shire for each division of the said counties; and that such knights shall be chosen in the same manner, and by the same classes and descriptions of voters, and in respect of the same several rights of voting, as if each of the said divisions were a separate county; and that the court for the election of knights of the shire for each division of the said counties shall be holden at the place to be named for that purpose in the Act so to be passed as aforesaid for settling and describing the divisions of the said counties.

Certain counties to return three knights of the shire.

15. And be it enacted, that in all future parliaments there shall be three knights of the shire, instead of two, to serve for each of the counties enumerated in the Schedule marked (F. 2.) to this Act annexed, and two knights of the shire, instead of one, to serve for each of the counties of Carmarthen, Denbigh, and Glamorgan.

Isle of Wight severed from Hampshire, to return a member.

16. And be it enacted, that the Isle of Wight in the county of Southampton shall for the purposes of this Act be a county of itself, separate and apart from the county of Southampton, and shall return one knight of the shire to serve in every future parliament; and that such knight shall be chosen by the same classes and descriptions of voters, and in respect of the same several rights of voting, as any knight of the shire shall be chosen in any county in England; and that all elections for the said county of the Isle of Wight shall be holden at the town of Newport in the Isle of Wight, and the Sheriff of the Isle of Wight, or his deputy, shall be the returning officer at such elections.

Towns which are counties of themselves to be included in adjoining counties for county elections.

17. And be it enacted, that for the purpose of electing a knight or knights of the shire to serve in any future parliament, the East Riding of the county of York, the North Riding of the county of York, the parts of Lindsey in the county of Lincoln, and the several counties at large enumerated in the second column of the Schedule marked (G.) to this Act annexed, shall respectively include the several cities and towns, and counties of the same, which are respectively mentioned in conjunction with such ridings, parts, and counties at large, and named in the first column of the said Schedule (G.)

18. And be it enacted, that no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, or in the election of a member or members to serve in any future parliament for any city or town being a county of itself, in respect of any freehold lands or tenements whereof such person may be seised for his own life, or for the life of another, or for any lives whatsoever, except such person shall be in the actual and bonâ fide occupation of such lands or tenements, or except the same shall have come to such person by marriage, marriage settlement, devise, or promotion to any benefice or to any office, or except the same shall be of the clear yearly value of not less than ten pounds above all rents and charges payable out of or in respect of the same; any statute or usage to the contrary notwithstanding: provided always, that nothing in this Act contained shall prevent any person now seised for his own life, or for the life of another, or for any lives whatsoever, of any freehold lands or tenements in respect of which he now has, or but for the passing of this Act might acquire, the right of voting in such respective elections, from retaining or acquiring, so long as he shall be so seised of the same lands or tenements, such right of voting in respect thereof, if duly registered according to the respective provisions hereinafter contained.

Limitation on the right of voting for counties and for cities being counties of themselves, in respect of freeholds for life.

19. And be it enacted, that every male person of full age, and not subject to any legal incapacity, who shall be seised at law or in equity of any lands or tenements of copyhold or any other tenure whatever, except freehold, for his own life, or for the life of another, or for any lives whatsoever, or for any larger estate, of the clear yearly value of not less than ten pounds over and above all rents and charges payable out of or in respect of the same, shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament for the county or for the riding, parts, or division of the county in which such lands or tenements shall be respectively situate.

Right of voting in counties extended to copyholders.

20. And be it enacted, that every male person of full age, and not subject to any legal incapacity, who shall be entitled either as lessee or assignee, to any lands or tenements, whether of freehold or of any other tenure whatever, for the unexpired residue, whatever it may be, of any term originally created for a period of not less than sixty years, (whether determinable on a life or lives, or not,) of the clearly yearly value of not less than ten pounds over and above all rents and charges payable out of or in respect of the same, or for the unexpired residue, whatever it may be, of any term originally created for a period of not less than twenty years, whether determinable on a life or lives, or not,) of the clearly yearly value of not less than fifty pounds over and above all rents and charges payable out of or in respect of the same, or who shall occupy as tenant any lands or tenements for which he shall be bonâ fide liable to a yearly rent of not less than fifty pounds, shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament for the county, or for the riding, parts, or divisions of the county, in which such lands or tenements shall be respectively situate: provided always, that no person, being only a sub-lessee, or the assignee of any underlease, shall have a right to vote in such election in respect of any such term of sixty years or twenty years as aforesaid, unless he shall be in the actual occupation of the premises.

Right of voting in counties extended to leaseholders and occupiers of premises of certain value above charges.

21. And be it declared and enacted, that no public or parliamentary tax, nor any church rate, county rate, or parochial rate shall be deemed to be any charge payable out of or in respect of any lands or tenements within the meaning of this Act.

What not to be deemed charges.

County voters need not be assessed to the land tax.

Provision as to trustees and mortgagees.

No person to vote for a county in respect of any freehold house, &c. occupied by himself, which would confer a vote for a borough.

No person to vote for a county in respect of certain copyholds and leaseholds in a borough.

Possession for a certain time, and registration, essential to the right of voting for a county.

Exception in case of property

22. And be it enacted, that in order to entitle any person to vote in any election of a knight of the shire or other member to serve in any future parliament, in respect of any messuages, lands, or tenements, whether freehold or otherwise, it shall not be necessary that the same shall be assessed to the land-tax; any statute to the contrary notwithstanding.

23. And be it enacted, that no person shall be allowed to have any vote in the election of a knight or knights of the shire for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate, but that the mortgagor or cestuique trust in possession shall and may vote for the same estate notwithstanding such mortgage or trust.

24. And be it enacted, that notwithstanding any thing hereinbefore contained, no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament in respect of his estate or interest as a freeholder in any house, warehouse, counting-house, shop, or other building occupied by himself, or in any land occupied by himself together with any house, warehouse, counting-house, shop, or other building, such house, warehouse, counting-house, shop, or other building being, either separately, or jointly, with the land so occupied therewith, of such value as would, according to the provisions hereinafter contained, confer on him the right of voting for any city or borough, whether he shall or shall not have actually acquired the right to vote for such city or borough in respect thereof.

25. And be it enacted, that notwithstanding any thing hereinbefore contained no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament in respect of his estate or interest as a copyholder or customary tenant, or tenant in ancient demesne, holding by copy of Court roll, or as such lessee or assignee, or as such tenant and occupier as aforesaid, in any house, warehouse, counting-house, shop, or other building, or in any land occupied together with a house, warehouse, counting-house, shop, or other building, such house, warehouse, counting-house, shop, or other building being, either separately or jointly with the land so occupied therewith, of such value as would according to the provisions hereinafter contained confer on him or on any other person the right of voting for any city or borough, whether he or any other person shall or shall not have actually acquired the right to vote for such city or borough in respect thereof.

26. And be it enacted, that notwithstanding any thing hereinbefore contained no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament unless he shall have been duly registered according to the provisions hereinafter contained; and that no person shall be so registered in any year in respect of his estate or interest in any lands or tenements, as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use, for six calendar months at least next previous to the last day of July in such year, which said period of six calendar months shall be sufficient, any statute to the contrary notwithstanding; and that no person shall be so registered in any year, in respect of any lands or tenements held by him as such lessee or assignee, or as such occupier and tenant as aforesaid, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use, as the case may require, for twelve calendar months next previous to the last day of July in such year: provided always, that where any lands or tenements, which would otherwise entitle the owner, holder, or occupier thereof to vote in any such election, shall come to any person, at any time

within such respective periods of six or twelve calendar months, by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to any office, such person shall be entitled in respect thereof to have his name inserted as a voter in the election of a knight or knights of the shire in the lists then next to be made by virtue of this Act as hereinafter mentioned, and, upon his being duly registered according to the provisions hereinafter contained, to vote in such election.

27. And be it enacted, that in every city or borough which shall return a member or members to serve in any future parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being either separately, or jointly with any land within such city, borough, or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than ten pounds, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough: provided always, that no such person shall be so registered in any year unless he shall have occupied such premises as aforesaid for twelve calendar months next previous to the last day of July in such year, nor unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township made during the time of such his occupation so required as aforesaid, nor unless such person shall have paid, on or before the twentieth day of July in such year, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the sixth day of April then next preceding: provided also, that no such person shall be so registered in any year unless he shall have resided for six calendar months next previous to the last day of July in such year within the city or borough, or within the place sharing in the election for the city or borough, in respect of which city, borough, or place respectively he shall be entitled to vote, or within seven statute miles thereof or of any part thereof.

28. And be it enacted, that the premises in respect of the occupation of which any person shall be entitled to be registered in any year, and to vote in the election for any city or borough as aforesaid, shall not be required to be the same premises, but may be different premises occupied in immediate succession by such person during the twelve calendar months next previous to the last day of July in such year, such person having paid, on or before the twentieth day of July in such year, all the poor's rates and assessed taxes which shall, previously to the sixth day of April then next preceding have become payable from him in respect of all such premises so occupied by him in succession.

29. And be it enacted, that where any premises as aforesaid, in any such city or borough, or in any place sharing in the election therewith, shall be jointly occupied by more persons than one as owners or tenants, each of such joint occupiers shall, subject to the conditions hereinbefore contained as to persons occupying premises in any such city, borough, or place, be entitled to vote in the election for such city or borough, in respect of the premises so jointly occupied, in case the clear yearly value of such premises shall be of an amount which, when divided by the number

coming by descent, &c.

Right of voting in boroughs to be enjoyed by occupiers of houses, &c. of the annual value of 10*l*.

No occupier to vote unless rated to the poor rate.

Rate and assessed taxes must be paid.

Residence also required.

Provision as to premises occupied in succession.

As to joint occupiers.

of such occupiers, shall give a sum of not less than ten pounds for each and every such occupier, but not otherwise.

Occupiers
may de-
mand to be
rated.

30. And be it enacted, that in every city or borough which shall return a member or members to serve in any future parliament, and in every place sharing in the election for such city or borough, it shall be lawful for any person occupying any house, warehouse, counting-house, shop, or other building, either separately, or jointly with any land occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, in any parish or township in which there shall be a rate for the relief of the poor, to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming and actually paying or tendering the full amount of the rate or rates, if any, then due in respect of such premises, the overseers of the parish or township in which such premises are situate are hereby required to put the name of such occupier upon the rate for the time being; and in case such overseers shall neglect or refuse so to do, such occupier shall nevertheless for the purposes of this Act be deemed to have been rated to the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid: provided always, that where by virtue of any act of parliament the landlord shall be liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord; but that in case the tenant who shall have been rated for such premises in consequence of any such claim as aforesaid shall make default in the payment of the poor's rates due in respect thereof, such landlord shall be and remain liable for the payment thereof in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant.

Provision as
to freehold-
ers voting
for cities
and towns
being coun-
ties of them-
selves.

31. And be it enacted, that in every city or town being a county of itself, in the election for which freeholders or burgrave tenants, either with or without any superadded qualification, now have a right to vote, every such freeholder or burgrave tenant shall be entitled to vote in the election of a member or members to serve in all future parliaments for such city or town, provided he shall be duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year in respect of any freehold or burgrave tenement, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof, for his own use, for twelve calendar months next previous to the last day of July in such year (except where the same shall have come to him, at any time within such twelve months, by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice in a church, or to any office,) nor unless he shall have resided for six calendar months next previous to the last day of July in such year within such city or town, or within seven statute miles thereof or of any part thereof: provided always, that nothing in this enactment contained shall be deemed to vary or abridge the provisions hereinbefore made relative to the right of voting for any city or town being a county of itself, in respect of any freehold for life or lives: provided also, that every freehold or burgrave tenement which may be situate without the present limits of any such city or town being a county of itself, but within the limits of such city or town, as the same shall be settled and described by the Act to be passed for that purpose as hereinbefore mentioned, shall confer the

To extend
to freeholds
within the
new bound-
aries.

right of voting in the election of a member or members to serve in any future parliament for such city or town in the same manner as if such freehold or burgage tenement were situate within the present limits thereof.

32. And be it enacted, that every person who would have been entitled to vote in the election of a member or members to serve in any future parliament for any city or borough not included in the Schedule marked (A.) to this Act annexed, either as a burgess or freeman, or in the city of London as a freeman and liveryman, if this Act had not been passed, shall be entitled to vote in such election, provided such person shall be duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year, unless he shall on the last day of July in such year be qualified in such manner as would entitle him to vote if such day were the day of election, and this Act had not been passed, nor unless, where he shall be a burgess or freeman, or freeman and liveryman of any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken, nor unless, where he shall be a burgess or freeman of any place sharing in the election for any city or borough, he shall have resided for six calendar months next previous to the last day of July in such year within such respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, and named in the second column of the Schedule marked (E. 2.) to this Act annexed: provided always, that no person who shall have been elected, made, or admitted a burgess or freeman since the first day of March, 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made, or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid: provided also, that no person shall be so entitled as a burgess or freeman in respect of birth unless his right be originally derived from or through some person who was a burgess or freeman, or entitled to be admitted a burgess or freeman, previously to the first day of March in the year 1831, or from or through some person who since that time shall have become or shall hereafter become a burgess or freeman in respect of servitude: provided also, that every person who would have been entitled, if this Act had not been passed, to vote as a burgess or freeman of Swansea, Loughor, Neath, Aberavon, or Kenfig, in the election of a member to serve in any future parliament for the borough of Cardiff, shall cease to vote in such election, and shall instead thereof be entitled to vote as such burgess or freeman in the election of a member to serve in all future parliaments for the borough composed of the towns of Swansea, Loughor, Neath, Aberavon, and Kenfig, subject always to the provisions hereinbefore contained with regard to a burgess or freeman of any place sharing in the election for any city or borough.

Freemen not to vote in boroughs, unless resident, &c.

Exclusion of freemen created since the 1st of March, 1831.

Exception.

Provision as to the freemen of Swansea, Loughor, Neath, Aberavon, and Kenfig.

33. And be it enacted, that no person shall be entitled to vote in the election of a member or members to serve in any future parliament for any city or borough, save and except in respect of some right conferred by this Act, or as a burgess or freeman, or as a freeman and liveryman, or in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned: provided always, that every

Reservation of other rights of voting in boroughs.

Residence,
&c. re-
quired.

person now having a right to vote in the election for any city or borough, except those enumerated in the said Schedule (A.) in virtue of any other qualification than as a burgess or freeman, or as a freeman and liveryman, or, in the case of a city or town being a county of itself, as a freeholder or burghage tenant, as hereinbefore mentioned, shall retain such right of voting so long as he shall be qualified as an elector according to the usages and customs of such city or borough, or any law now in force, and such person shall be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, if duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year unless he shall, on the last day of July in such year, be qualified as such elector in such manner as would entitle him then to vote if such day were the day of election and this Act had not been passed, nor unless such person, where his qualification shall be in any city or borough, shall have resided for six calendar months next previous to the last day of July in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken, nor unless such person, where his qualification shall be within any place sharing in the election for any city or borough, shall have resided for six calendar months next previous to the last day of July in such year within such respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, and named in the second column of the Schedule marked (E. 2.) to this Act annexed: provided nevertheless, that every such person shall for ever cease to enjoy such right of voting for any such city or borough as aforesaid if his name shall have been omitted for two successive years from the register of such voters for such city or borough hereinafter directed to be made, unless he shall have been so omitted in consequence of his having received parochial relief within twelve calendar months next previous to the last day of July in any year, or in consequence of his absence on the naval or military service of his Majesty.

Provision as
to persons
now entitled
to vote for
New Shore-
ham, Crick-
lade, Ayles-
bury, or
East Ret-
ford, in
respect of
freeholds.

34. And be it enacted, that every person now having a right to vote for the borough of New Shoreham, or of Cricklade, Aylesbury, or East Retford respectively, in respect of any freehold, wheresoever the same may be situate, shall retain such right of voting, subject always to the same provisions as are hereinbefore mentioned with regard to persons whose right of voting for any borough is saved and reserved by this Act, save and except that such persons now having a right to vote for the borough of New Shoreham, or of Cricklade, Aylesbury, or East Retford respectively, shall not be registered in any year unless they shall have resided for six calendar months next previous to the last day of July in such year within the borough of New Shoreham, or of Cricklade, Aylesbury, or East Retford respectively, as defined by this Act, or within seven statute miles of such respective borough or of any part thereof; and that for the purpose of the registration hereinafter required all persons now having a right to vote for the borough of New Shoreham in respect of any freeholds which may be situate in the borough of Horsham, or for the borough of Cricklade in respect of any freeholds which may be situate in the borough of Malmesbury, as such boroughs of Horsham or Malmesbury may respectively be defined by the Act to be passed for that purpose as hereinbefore mentioned, shall be inserted in the list of voters hereinafter directed to be made by the overseers of that parish or township within the borough of New Shoreham or the borough of Cricklade respectively, as de-

fined by this Act, which shall be next adjoining to the parish or township in which such freeholds shall respectively be situate; and if the parish or township in which any such freeholds shall be situate shall adjoin two or more parishes or townships within either of the said boroughs of New Shoreham or Cricklade, the persons so having a right to vote in respect of such freeholds shall be inserted in the list of voters to be made by the overseers of the least populous of such adjoining parishes or townships, according to the last census for the time being.

35. Provided nevertheless, and be it enacted, that notwithstanding any thing hereinbefore contained no person shall be entitled to vote in the election of a member or members to serve in any future parliament for any city or borough (other than a city or town being a county of itself, in the election for which freeholders or burgage tenants have a right to vote as hereinbefore mentioned,) in respect of any estate or interest in any burgage tenement or freehold which shall have been acquired by such person since the 1st day of March, 1831, unless the same shall have come to or been acquired by such person, since that day, and previously to the passing of this Act, by descent, succession, marriage, marriage-settlement, devise, or promotion to any benefice in a church, or by promotion to any office.

Exclusion of certain rights of voting in boroughs acquired since the 1st of March, 1831.

36. And be it enacted, that no person shall be entitled to be registered in any year as a voter in the election of a member or members to serve in any future parliament for any city or borough who shall within twelve calendar months next previous to the last day of July in such year have received parochial relief or other alms, which by the law of parliament now disqualify from voting in the election of members to serve in parliament.

As to receipt of parochial relief.

37. And whereas it is expedient to form a register of all persons entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, and that for the purpose of forming such register the overseers of every parish and township should annually make out lists in the manner hereinafter mentioned; be it therefore enacted, that the overseers of the poor of every parish and township shall, on the twentieth day of June in the present and in every succeeding year, cause to be fixed up or near the doors of all the churches and chapels within such parish or township, or if there be no church or chapel therein, then to be fixed in some public and conspicuous situation within the same respectively, a notice according to the form numbered 1. in the Schedule (H.) to this Act annexed, requiring all persons who may be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, in respect of any property situate wholly or in part in such parish or township, to deliver or transmit to the said overseers, on or before the twentieth day of July in the present and every succeeding year, a notice of their claim as such voters, according to the form numbered 2. in the said Schedule (H.) or to the like effect: provided always, that after the formation of the register to be made in each year, as hereinafter mentioned, no person whose name shall be upon such register for the time being shall be required thereafter to make any such claim as aforesaid, so long as he shall retain the same qualification, and continue in the same place of abode described in such register.

Overseers to give notice annually, requiring county voters to send in their claims.

38. And be it enacted, that the overseer of the poor of every parish and township shall, on or before the last day of July in the present year, make out or cause to be made out, according to the form numbered 3. in the said Schedule (H.), an alphabetical list of all persons who shall claim as aforesaid to be inserted in such list as voters in the election of a knight

Persons once on the register not required to make any subsequent claim.

Overseers to prepare lists of county voters, and to publish them every year.

or knights of the shire to serve for the county, or for the riding, parts, or division of the county wherein such parish or township lies, in respect of any lands or tenements situate wholly or in part within such parish or township; and that the said overseers shall, on or before the last day of July in every succeeding year, make out or cause to be made out a like list, containing the names of all persons who shall be upon the register for the time being as such voters, and also the names of all persons who shall claim as aforesaid to be inserted in such last-mentioned list as such voters; and in every list so to be made by the overseers as aforesaid, the Christian name and surname of every person shall be written at full length, together with the place of his abode, the nature of his qualification, and the local or other description of such lands or tenements, as the same are respectively set forth in his claim to vote, and the name of the occupying tenant, if stated in such claim; and the said overseers, if they shall have reasonable cause to believe that any person so claiming as aforesaid, or whose name shall appear in the register for the time being, is not entitled to vote in the election of a knight or knights of the shire for the county, or for the riding, parts, or division of the county in which their parish or township is situate, shall have power to add the words "objected to" opposite the name of every such person on the margin of such list; and the said overseers shall sign such list, and shall cause a sufficient number of copies of such list to be written or printed, and to be fixed on or near the doors of all the churches and chapels within their parish or township, or if there be no church or chapel therein, then to be fixed up in some public and conspicuous situation within the same respectively, on the two Sundays next after such list shall have been made; and the said overseers shall likewise keep a true copy of such list, to be perused by any person, without payment of any fee, at all reasonable hours during the two first weeks after such list shall have been made: provided always, that every precinct or place, whether extra-parochial or otherwise, which shall have no overseers of the poor, shall for the purpose of making out such list as aforesaid be deemed to be within the parish or township adjoining thereto, such parish or township being situate within the same county, or the same riding, parts, or divisions of a county, as such precinct or place; and if such precinct or place shall adjoin two or more parishes or townships so situate as aforesaid, it shall be deemed to be within the least populous of such parishes or townships, according to the last census for the time being; and the overseers of the poor of every such parish or township shall insert in the list for their respective parish or township the names of all persons who shall claim as aforesaid to be inserted therein as voters in the election of a knight or knights of the shire to serve for the county, or for the riding, parts, or division of the county, in which such precinct or place as aforesaid lies, in respect of any lands or tenements situate wholly or in part within such precinct or place.

Overseers to have power to object to any name inserted in the lists;

to keep copies of lists for inspection.

Provision as to places having no overseers.

Notice of objection by third parties to persons not entitled to be retained in the county lists.

39. And be it enacted, that every person who shall be upon the register for the time being of voters for any county, or for any riding, parts, or division of a county, or who shall have claimed to be inserted in any list for the then current year of voters for any county, or any riding, parts, or division of a county, may object to any person as not having been entitled on the last day of July then next preceding to have his name inserted in any list of voters for such county, riding, parts, or division so to be made out as aforesaid; and every person so objecting (save and except overseers objecting in the manner hereinbefore mentioned) shall on or before the twenty-fifth day of August in the present and in

every succeeding year, give or cause to be given a notice in writing according to the form numbered 4. in the said Schedule (H.), or to the like effect, to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted; and the person so objecting shall also, on or before the twenty-fifth day of August in the present and in every succeeding year, give to the person objected to, or leave at his place of abode as described in such list, or personally deliver to his tenant in occupation of the premises described in such list, a notice in writing according to the form numbered 5. in the said Schedule (H.), or to the like effect; and the overseers shall include the names of all persons so objected to in a list according to the form numbered 6. in the said Schedule (H.), and shall cause copies of such list to be fixed on or near all the doors of all the churches and chapels within their parish or township, or if there be no church or chapel therein, then to be fixed in some public and conspicuous situation within the same respectively, on the two Sundays next preceding the fifteenth day of September in the present and in every succeeding year; and the overseers shall likewise keep a copy of the names of all the persons so objected to, to be perused by any person, without payment of any fee, at all reasonable hours during the ten days next preceding the said fifteenth day of September in the present and in every succeeding year.

List of persons objected to by third parties to be published, &c.

40. And be it enacted, that on the twenty-ninth day of August in the present and in every succeeding year, the overseers of every parish and township shall deliver the list of voters so made out as aforesaid, together with a written statement of the number of persons objected to by the overseers and by other persons, to the high constable or high constables of the hundred or other like district in which such parish or township is situate; and such high constable or high constables shall forthwith deliver all such lists, together with such statements as aforesaid, to the clerk of the peace of the county, riding, or parts, who shall forthwith make out an abstract of the number of persons objected to by the overseers and by other persons in each parish and township, and transmit the same to the barrister or barristers appointed as hereinafter mentioned to revise such lists, in order that the said barrister or barristers may fix proper times and places for holding his or their courts for the revision of the said lists.

Lists of county votes to be forwarded to the clerks of the peace

41. And be it enacted, that the lord chief justice of the Court of King's Bench for the time being shall, in the month of July or August in the present and in every succeeding year, nominate and appoint for Middlesex, and the senior judge for the time being in the commission of assize for every other county shall, when travelling the summer circuit, in the present and in every succeeding year, nominate and appoint for every such county, or for each of the ridings, parts, or divisions of such county, a barrister or barristers to revise the list of voters in the election of a knight or knights of the shire; and such barrister or barristers so appointed as aforesaid shall give public notice, as well by advertisement in some of the newspapers circulating within the county, riding, parts, or division, as also by a notice to be fixed in some public and conspicuous situation at the principal place of election for the county, riding, parts, or division, (such last-mentioned notice to be given three days at the least before the commencement of his or their circuit,) that he or they will make a circuit of the county, riding, parts, or division, for which he or they shall be so appointed, and of the several times and places at which he or they will hold courts for that purpose, such times being between the fifteenth day of September inclusive, and the twenty-fifth day of October inclusive, in the present and every succeeding year, and he or they shall

Judges of assize to name barristers, who shall revise the lists of county voters.

Period for revision.

hold open courts for that purpose at the times and places so to be announced; and where two or more barristers shall be appointed for the same county, riding, parts, or division, they shall attend at the same places together, but shall sit apart from each other, and hold separate courts at the same time for the dispatch of business: provided always, that no member of parliament, nor any person holding any office or place of profit under the crown, shall be appointed such barrister, and that no barrister so appointed as aforesaid shall be eligible to serve in parliament for eighteen months from the time of such his appointment for the county, riding, parts, or division, for which he shall be so appointed.

Clerk of the peace and overseers to attend before the barristers, who shall retain on the county lists all names not objected to, and shall expunge those whose qualification, if objected to, shall not be proved.

Power to rectify mistakes and supply omissions in the lists. Proviso.

42. And be it enacted, that the clerk of the peace shall at the opening of the first court to be held by every such barrister for any county, or for any riding, parts, or division of a county, produce or cause to be produced before him the several lists of voters for such county, riding, parts, or division which shall have been delivered to such clerk of the peace by the high constables as aforesaid; and the overseers of every parish and township who shall have made out the list of voters shall attend the court to be held by every such barrister at the place appointed for revising the lists relating to such parish or township respectively, and shall also deliver to such barrister a copy of the list of the persons objected to, so made out by them as aforesaid; and the said overseers shall answer upon oath all such questions as such barrister may put to them or any of them touching any matter necessary for revising the lists of voters; and every such barrister shall retain on the lists of voters the names of all persons to whom no objection shall have been made by the overseers, or by any other person, in the manner hereinbefore mentioned; and he shall also retain on the list of voters the name of every person who shall have been objected to by any person other than the overseers, unless the party so objecting shall appear by himself or by some one on his behalf in support of such objection; and where the name of any person inserted in the list of voters shall have been objected to by the overseers, or by any other person, in the manner hereinbefore mentioned, and such person so objecting shall appear by himself or by some one on his behalf in support of such objection, every such barrister shall require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from the said lists; and he shall also expunge from the said lists the name of every person who shall be proved to him to be dead; and shall correct any mistake which shall be proved to him to have been made in any of the said lists as to any of the particulars by this Act required to be inserted in such lists; and where the Christian name of any person, or his place of abode, or the nature of his qualification, or the local or other description of his property, or the name of the tenant in the occupation thereof, as the same respectively are required to be inserted in any such list, shall be wholly omitted therefrom, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list: provided always, that no person's name shall be expunged from any such list, except in case of his death or of his being objected to on the margin of

the list by the overseers as aforesaid, or except in case of any such omission or omissions as hereinbefore last-mentioned, unless such notice as is hereinbefore required in that behalf shall have been given to the overseers, nor unless such notice as is hereinbefore required in that behalf shall have been given to such person, or left at his place of abode, or delivered to his tenant as hereinbefore mentioned.

43. Provided also, and be it enacted, that if it shall happen that any person who shall have given to the overseers of any parish or township due notice of his claim to have his name inserted in the list of voters in the election of a knight or knights of the shire, shall have been omitted by such overseers from such list, it shall be lawful for the barrister, upon the revision of such list, to insert therein the name of the person so omitted, in case it shall be proved to the satisfaction of such barrister that such person gave due notice of such his claim to the said overseers, and that he was entitled on the last day of July then next preceding to be inserted in the list of voters in the election of a knight or knights of the shire for the county, or for the riding, parts, or division of the county, wherein the parish or township of such overseers may be situate, in respect of any lands or tenements within such parish or township.

44. And be it enacted, that the overseers of the poor of every parish and township either wholly or in part situate within any city or borough, or place sharing in the election for any city or borough, which shall return a member or members to serve in any future parliament, shall, on or before the last day of July in the present and in each succeeding year, make out or cause to be made out, according to the Form numbered 1. in the Schedule marked (I.) to this Act annexed, an alphabetical list of all persons who may be entitled by virtue of this Act to vote in the election of a member or members to serve in any future parliament for such city or borough in respect of the occupation of premises of the clear yearly value of not less than ten pounds as hereinbefore mentioned, situate wholly or in part within such parish or township, and another alphabetical list, according to the Form numbered 2. in the said Schedule (I.), of all other persons (except freemen) who may be entitled to vote in the election for such city or borough by virtue of any other right whatsoever; and in each of the said lists the Christian name and surname of every person shall be written at full length, together with the nature of his qualification; and where any person shall be entitled to vote in respect of any property, then the name of the street, lane, or other description of the place where such property may be situate shall be specified in the list; and where any person shall be entitled to vote otherwise than in respect of any property, then the name of the street, lane, or other description of the place of such person's abode shall be specified in the list; and the overseers shall sign each of such lists, and shall cause a sufficient number of copies of such lists to be printed, and to be fixed on or near the doors of all the churches and chapels in their several parishes and townships, or if there be no church or chapel therein, then to be fixed up in some public and conspicuous situation within the same respectively, on the two Sundays next after such lists shall have been made; and the said overseers shall likewise keep true copies of such lists, to be perused by any person, without payment of any fee, at all reasonable hours during the two first weeks after such lists shall have been made.

45. And be it enacted, that every precinct or place, whether extra-parochial or otherwise, having no overseers of the poor, which now is or hereafter may be within any city or borough, or within any place sharing in the election for any city or borough, shall, for the purpose of making

Barrister to have power to insert in the county lists the names of claimants omitted by the overseers on proof of claim and qualification.

Overseers to prepare lists of persons (other than freemen) entitled to vote in boroughs, and to publish them.

Copies of lists to be kept for inspection.

Provision for places within boroughs having no overseers.

out the list of voters for such city or borough, be deemed to be within the parish or township adjoining thereto, and situate wholly or in part within such city or borough, or within such place sharing in the election therewith; and if such precinct or place shall adjoin two or more parishes or townships so situate as aforesaid, it shall be deemed to be within the least populous of such parishes or townships according to the last census for the time being; and the overseers of every such parish or township shall insert in the list for their respective parish or township the names of all persons who may be entitled to vote in the election of a member or members to serve in any future parliament for any such city or borough in respect of any property occupied by such persons within such city or borough, or within any place sharing in the election therewith, such property being situate wholly or in part within such precinct or place as aforesaid.

Town clerks
to prepare
and publish
the lists of
freemen.

46. And be it enacted, that the town clerk of every city or borough shall, on or before the last day of July in the present and in each succeeding year, make out or cause to be made out, according to the Form numbered 3. in the said Schedule (I.), an alphabetical list of all the freemen of such city or borough who may be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, together with the respective places of their abode; and the town clerk of every place sharing in the election for any city or borough shall, at the respective times aforesaid, make out or cause to be made out a like list of all the freemen of such place who may be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough; and every such town clerk shall cause a copy of every such list to be fixed on or near the door of the town hall, or in some public and conspicuous situation within such respective city, borough, or place as aforesaid, on the two Sundays next after such list shall have been made, and shall likewise keep a true copy of such list, to be perused by any person, without payment of any fee, at all reasonable hours during the two first weeks after such list shall have been made: Provided always, that where there shall be no town clerk for such city, borough, or place as aforesaid, or where the town clerk shall be dead or incapable of acting, all matters by this Act required to be done by and with regard to the town clerk shall be done by and with regard to the person executing duties similar to those of the town clerk, and if there be no such person, then by and with regard to the chief civil officer of such city, borough, or place.

Persons
omitted in
the borough
lists to give
notice of
their claims.

47. And be it enacted, that every person whose name shall have been omitted in any such list of voters for any city or borough so to be made out as hereinbefore mentioned, and who shall claim to have his name inserted therein as having been entitled on the last day of July then next preceding, shall, on or before the twenty-fifth day of August in the present and in every succeeding year, give or cause to be given a notice in writing, according to the Form numbered 4. in the said Schedule (I.), or to the like effect, to the overseers of that parish or township in the list whereof he shall claim to have his name inserted, or if he shall claim as a freeman of any city or borough, or place sharing in the election therewith, then to the town clerk of such city, borough, or place; and every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not having been entitled on the last day of July then next preceding to have his name inserted in any list of voters for the same city or borough, and every person so objecting shall, on or before the twenty-fifth day of August in the present and in every succeeding year, give or cause to be given a notice in writing, according to the Form numbered 5. in the said Schedule (I.), or to the like effect, to

Notices as
to persons
not entitled
to be re-
tained in the
lists.

the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted, or if the person so objected to shall have been inserted in the list of freemen of any city, borough, or place as aforesaid, then to the town clerk of such city, borough, or place; and the overseers shall include the names of all persons so claiming as aforesaid in a list according to the Form numbered 6. in the said Schedule (I.), and the names of all persons so objected to as aforesaid in a list according to the form numbered 7. in the said Schedule (I.), and shall cause copies of such two lists to be fixed on or near the doors of all the churches and chapels within their parish or township, or if there be no church or chapel therein, then to be fixed in some public and conspicuous situation within the same respectively, on the two Sundays next preceding the fifteenth day of September in the present and in every succeeding year; and every town clerk shall include the names of all persons so claiming as freemen in a list according to the Form numbered 8. in the said Schedule (I.), and the names of all persons so objected to as freemen in a list according to the Form numbered 9. in the said Schedule (I.), and shall cause copies of such two lists to be fixed on or near the door of the town hall, or in some public and conspicuous situation, within his respective city, borough, or place as aforesaid, on the two Sundays hereinbefore last mentioned in the present and in every succeeding year; and the overseers and town clerks shall likewise keep a copy of the names of all the persons so claiming as aforesaid, and also a copy of the names of all persons so objected to as aforesaid, to be perused by any person, without payment of any fee, at all reasonable hours during the ten days next preceding the said fifteenth day of September in the present and in every succeeding year, and shall deliver a copy of each of such lists to any person requiring the same, on payment of one shilling for each copy.

Lists of claimants, and of persons objected to, to be published, &c.

48. And be it enacted, that for providing a list of such of the freemen of the city of London as are liverymen of the several companies entitled to vote in the election of a member or members to serve in any future parliament for the city of London, the returning officer or officers of the said city shall, on or before the last day of July in the present and in each succeeding year, issue precepts to the clerks of the said livery companies, requiring them forthwith to make out or cause to be made out, at the expense of the respective companies, an alphabetical list, according to the Form in the Schedule (K.) to this Act annexed, of the freemen of London being liverymen of the said respective companies and entitled to vote in such election; and every such clerk shall sign such list, and transmit the same, with two printed copies thereof, to such returning officer or officers, who shall forthwith fix one such copy in the Guildhall and one in the Royal Exchange of the said city, there to remain fourteen days in the present and in every subsequent year; and the clerks of the said livery companies shall cause a sufficient number of such lists of freemen and liverymen of their respective companies to be printed at the expense of the respective companies, and shall keep the same, to be perused by any person, without payment of any fee, at all reasonable hours during the two first weeks after such lists shall have been printed; and every person whose name shall have been omitted in any such list of freemen and liverymen, and who shall claim to have his name inserted therein as having been entitled on the last day of July then next preceding, shall, on or before the twenty-fifth day of August in the present and in every succeeding year, give or cause to be given a notice in writing according to the Form numbered 1. in the said Schedule (K.), or to the like effect, to the returning officer or officers, and to the clerk of that company in the list whereof he shall claim

List of liverymen of London to be transmitted to the returning officer.

Notices to be given of omissions and objections in list of liverymen.

to have his name inserted; and the returning officer or officers shall include the names of all persons so claiming as aforesaid in a list according to the Form numbered 2. in the said Schedule (K.), and shall cause such last-mentioned list to be fixed in the Guildhall and Royal Exchange of the said city on the two Mondays next preceding the fifteenth day of September in the present and in every succeeding year; and the said returning officer or officers, and clerks of the said companies, shall likewise keep a copy of the names of all the persons so claiming as aforesaid, to be perused by any person, without payment of any fee, at all reasonable hours during the ten days next preceding the said fifteenth day of September in the present and in every succeeding year; and every person who shall object to any other person as not having been entitled on the last day of July then next preceding to have his name inserted in any such livery list shall, on or before the twenty-fifth day of August in the present and in every succeeding year, give to such other person, or leave at his usual place of abode, a notice in writing according to the Form numbered 3. in the said Schedule (K.), or to the like effect; and in the city of London the returning officer or officers shall take the poll or votes of such freemen of the said city being liverymen of the several companies as are entitled to vote at such election in the Guildhall of the said city; and the said returning officer or officers shall not be required to provide any booth or compartments, but shall appoint or take one poll for the whole number of such liverymen at the same place.

Poll of liverymen to be taken at Guildhall.

Judges of assize to name barristers, who shall revise the lists of borough voters.

49. And be it enacted, that the lord chief justice of the Court of King's Bench for the time being shall, in the month of July or August in the present and in every succeeding year, nominate and appoint so many barristers as the said lord chief justice shall deem necessary, to revise the respective lists of voters for the city of London, and for the city of Westminster, and for the several boroughs in the county of Middlesex; and that the senior judge for the time being in the commission of assize for every other county shall, when travelling the summer circuit, in the present and in every succeeding year, nominate and appoint so many barristers as the said judge shall deem necessary, to revise the respective lists of voters, as well for the several cities and boroughs in every such county, as for every city and town, and county of a city and town, next adjoining to any such county; and the town and county of the town of Kingston-upon-Hull shall for this purpose be considered as next adjoining to the county of York, and the town and county of the town of Newcastle-upon-Tyne as next adjoining to the county of Northumberland, and the city and county of the city of Bristol as next adjoining to the county of Somerset; and the said lord chief justice and judge respectively shall have power to nominate and appoint one or more barristers to revise the lists for the same city or borough or other place as aforesaid, or one barrister only, to revise the lists for several cities, boroughs, and other places as aforesaid: Provided always, that no member of parliament, nor any person holding any office or place of profit under the crown, shall be appointed as such barrister as aforesaid, and that no barrister so appointed as aforesaid shall be eligible to serve in parliament for eighteen months from the time of his appointment for any city, borough, or other place as aforesaid, for which he shall be so appointed: Provided also, that nothing herein contained shall prevent the same barrister from being appointed to revise the lists for two or more counties, ridings, parts, or divisions, or for any county, riding, part, or division, and any one or more of the cities or boroughs therein.

Proviso.

50. And be it enacted, that the barrister or barristers so appointed to revise the lists of voters for any city or borough shall hold an open court or courts for that purpose within such city or borough, and also within every place sharing in the election for such city or borough, at some time between the fifteenth day of September inclusive and the twenty-fifth day of October inclusive in the present and in every succeeding year, having first given three clear days notice of the holding of such court or courts, to be fixed on the doors of all the churches and chapels within such city, borough, or place respectively, or if there be no church or chapel therein, then to be fixed in some public and conspicuous situation within the same respectively; and the overseers and town clerks who shall have made out the list of voters as aforesaid, and in the case of the city of London the returning officer or officers of the said city, shall, at the opening of the first court to be held by every such barrister for revising such lists, produce their respective lists before him; and the said overseers and town clerks shall also deliver to such barrister a copy of the list of the persons objected to, so made out by them as aforesaid; and the clerks of the several livery companies of the city of London, and the town clerk of every other city or borough, or place sharing in the election therewith, and the several overseers within every city, borough, or place as aforesaid, shall attend the court to be held by every such barrister for any such city, borough, or place as aforesaid, and shall answer upon oath all such questions as such barrister may put to them or any of them touching any matter necessary for revising the lists of voters; and every such barrister shall insert in such lists the name of every person who shall be proved to his satisfaction to have been entitled on the last day of July then next preceding to have his name inserted in any such list of voters for such city or borough; and such barrister shall retain on the lists of voters for such city or borough the names of all persons to whom no objection shall have been made in the manner hereinbefore mentioned, and he shall also retain on the said lists the name of every person who shall have been objected to by any person, unless the party so objecting shall appear by himself, or by some one on his behalf, in support of such objection; and where the name of any person inserted in the list of voters for such city or borough shall have been objected to in the manner hereinbefore mentioned, and the person so objecting shall appear by himself, or by some one on his behalf, in support of such objection, every such barrister shall require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters for such city or borough in respect of the qualification described in such list, and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from the said lists, and he shall also expunge from the said lists the name of every person who shall be proved to him to be dead, and shall correct any mistake which shall be proved to him to have been made in any of the said lists as to any of the particulars by this Act required to be inserted in such lists; and where the Christian name, or the place of abode, or the nature of the qualification, or the local description of the property of any person who shall be included in any such list shall be wholly omitted in such list in any case where the same is by this Act directed to be specified therein, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted be supplied to the satisfaction of such barrister before he shall have completed the revision of such list,

Barrister to revise lists of borough voters, and upon due proof to insert and expunge names.

Power to rectify mistakes and supply omissions in the lists.

in which case he shall then and there insert the same in such list: provided always, that no person's name shall be inserted by such barrister in any such list for any city or borough, or shall be expunged therefrom, except in the case of death, or of such omission or omissions as heretofore last-mentioned, unless such notice shall have been given as is hereinbefore required in each of the said cases.

Power of inspecting tax assessments and rate books.

51. And be it enacted, that the overseers of every parish or township shall, for their assistance in making out the lists in pursuance of this Act, (upon request made by them or any of them, at any reasonable time between the first day of June and the last day of July in the present and in any succeeding year, to any assessor or collector of taxes, or to any other officer having the custody of any duplicate or tax assessment for such parish or township,) have free liberty to inspect any such duplicate or tax assessment, and to extract from thence such particulars as may appear to such overseer or overseers to be necessary; and every barrister appointed under this Act shall have power to require any assessor, collector of taxes, or other officer having the custody of any duplicate or tax assessment, or any overseer or overseers having the custody of any poor rate, to produce the same respectively before him at any court to be held by him, for the purpose of assisting him in revising the lists to be by him revised in pursuance of this Act.

Barrister, on revising the lists, to have power of adjourning, of administering oaths, &c.;

52. And be it enacted, that every barrister holding any court under this Act as aforesaid shall have power to adjourn the same from time to time, and from any one place to any other place or places within the same county, riding, parts, or division, or within the same city or borough, or within any place sharing in the election for such city or borough, but so as that no such adjourned court shall be held after the twenty-fifth day of October in any year; and every such barrister shall have power to administer an oath, (or, in the case of a Quaker or Moravian, an affirmation,) to all persons making objection to the insertion or omission of any name in any of such lists as aforesaid, and to all persons objected to or claiming to be inserted in any of such lists, or claiming to have any mistake corrected or any omission supplied to any of such lists, and to all witnesses who may be tendered on either side; and that if any person taking any oath or making any affirmation under this Act shall wilfully swear or affirm falsely, such person shall be deemed guilty of perjury, and shall be punished accordingly: and that at the holding of such respective courts the parties shall not be attended by counsel: and that every such barrister shall, upon the hearing in open court, finally determine upon the validity of such claims and objections, and shall for that purpose have the same powers and proceed in the same manner (except where otherwise directed by this Act) as the returning officer of any county, city, or borough, according to the laws and usages now observed at elections; and such barrister shall in open court write his initials against the names respectively struck out or inserted, and against any part of the said lists in which any mistake shall have been corrected or any omission supplied, and shall sign his name to every page of the several lists so settled.

and to settle and sign the lists in open court.

Judges to appoint additional barristers in case of need.

53. And be it enacted, that notwithstanding any thing hereinbefore contained, if it shall be made to appear to the lord chief justice or judge who shall have appointed any barrister or barristers under this Act, to revise the list of voters, that by reason of the death, illness or absence of any such barrister or barristers, or by reason of the insufficiency of the number of such barristers, or from any other cause, such lists cannot be revised within the period directed by this Act, it shall be lawful for such lord chief justice or judge, and he is hereby required, to appoint one or

more barrister or barristers to act in the place of or in addition to the barrister or barristers originally appointed; and such barrister or barristers so subsequently appointed shall have the same powers and authorities in every respect as if they had been originally appointed by such lord chief justice or judge.

54. And be it enacted, that the lists of voters for each county, or for the riding, parts or division of each county, so signed as aforesaid by any such barrister, shall be forthwith transmitted by him to the clerk of the peace of the county, riding or parts for which such barrister shall have been appointed; and the clerk of the peace shall keep the said lists among the records of the sessions, arranged with every hundred in alphabetical order, and with every parish and township within such hundred likewise in alphabetical order, and shall forthwith cause the said lists to be fairly and truly copied in the same order in a book to be by him provided for that purpose, and shall prefix to every name so copied out its proper number, beginning the numbers from the first name, and continuing them in a regular series down to the last name, and shall complete and deliver such book on or before the last day of October in the present and in every succeeding year to the Sheriff of the county, or his Under-sheriff, who shall safely keep the same, and shall at the expiration of his office deliver over the same to the succeeding Sheriff or his Under-sheriff; and the lists of voters for each city or borough, so signed as aforesaid by any such barrister, shall be forthwith delivered by him to the returning officer for such city or borough, who shall safely keep the same, and shall cause the said lists to be fairly and truly copied in a book to be by him provided for that purpose, with every name therein numbered according to the directions aforesaid, and shall cause such book to be completed on or before the last day of October in the present and in every succeeding year, and shall deliver over such book, together with the lists, at the expiration of his office, to the person succeeding him in such office; and every such book, to be so completed on or before the last day of October in the present year, shall be deemed the register of the electors to vote, after the end of this present parliament, in the choice of a member or members to serve in parliament for the county, riding, parts or division of a county, city or borough to which such register shall relate, at any election which may take place after the said last day of October in the present year and before the first day of November in the year 1833; and every such book to be so completed on or before the last day of October in the year 1833, and in every succeeding year, shall be the register of electors to vote at any election which shall take place between the first day of November inclusive in the year wherein such respective register shall have been made and the first day of November in the succeeding year.

55. And be it enacted, that the overseers of every parish and township shall cause to be written or printed copies of the lists so by them to be made in the present and in every succeeding year, and shall deliver such copies to all persons applying for the same, on payment of a reasonable price for each copy; and the monies arising from the sale thereof shall be accounted for by the said overseers, and applied to the same purposes as monies collected for the relief of the poor; and the clerks of the peace shall cause to be written or printed copies of the registers of the electors for their respective counties, ridings or parts, or for the division of their respective counties; and the returning officer of every city or borough shall cause to be written or printed copies of the register of the electors for such city or borough; and every such clerk of the peace, and every such returning officer, shall deliver such respective copies to all persons

County lists to be transmitted to clerk of the peace; borough lists to be kept by returning officer, and handed to his successor.

Lists to be copied into books, with the names numbered.

Such books to be the register of electors.

Register how long to be in force.

Copies of the lists and of the registers to be printed for sale.

applying for the same, on payment of a reasonable price for such copy; and the monies arising from the sale of all such copies shall be accounted for to the treasurer of the county, riding or parts.

Expences of overseers, clerks of the peace, &c. how to be defrayed.

56. And be it enacted, that for the purpose of defraying the expences to be incurred by the overseers of the poor and by the clerk of the peace in carrying into effect the several provisions of this Act, so far as relates to the electors for any county, or for any riding, parts or division of a county, every person, upon giving notice of his claim as such elector to the overseers, as hereinbefore mentioned, shall pay or cause to be paid to the said overseers the sum of one shilling; and such notice of claim shall not be deemed valid until such sum shall have been paid; and the overseers of each parish or township shall add all monies so received by them to the money collected or to be collected for the relief of the poor in such parish or township, and such monies so added shall be applicable to the same purposes as monies collected for the relief of the poor; and that for the purpose of defraying the expences to be incurred by the returning officer of every city and borough, and by the overseers of the several parishes and townships in every city and borough, and place sharing in the election therewith, in carrying into effect the provisions of this Act, so far as relates to the electors for such city or borough, every such elector whose name shall be upon the register of voters for such city or borough for the time being shall be liable to the payment of one shilling annually, which sum shall be levied and collected from each elector in addition to and as a part of the money payable by him as his contribution to the rate for the relief of the poor, and such sum shall be applicable to the same purposes as money collected for the relief of the poor; and that the expences incurred by the overseers of any parish or township in making out, printing and publishing the several lists and notices directed by this Act, and all other expences incurred by them in carrying into effect the provisions of this Act, shall be defrayed out of the money collected or to be collected for the relief of the poor in such parish or township; and that all expences incurred by the returning officer of any city or borough in causing the lists of the electors for such city or borough to be copied out and made into a register, and in causing copies of such register to be written or printed, shall be defrayed by the overseers of the poor of the several parishes and townships within such city or borough, or place sharing in the election therewith, out of the money collected or to be collected for the relief of the poor in such parishes and townships, in proportion to the number of persons placed on the register of voters for each parish or township; and that all expences incurred by the clerk of the peace of any county, riding or parts, in causing the lists of the electors for such county, riding or parts, or for any division of such county, to be copied out and made into a register, and in causing copies of such register to be written or printed, and in otherwise carrying into effect the provisions of this Act, shall be defrayed by the treasurer of such county, riding or parts, out of any public money in his hands, and he shall be allowed all such payments in his accounts: provided always, that no expences incurred by any clerk of the peace under this Act shall be so defrayed unless the account shall be laid before the justices of the peace at the next quarter sessions after such expences shall have been incurred, and allowed by the court.

Remuneration of the barristers for revising the lists.

57. And be it enacted, that every barrister appointed to revise any lists of voters under this Act shall be paid at the rate of five guineas for every day that he shall be so employed, over and above his travelling and other expences; and every such barrister, after the termination of his last sitting, shall lay or cause to be laid before the lords commissioners of his

Majesty's treasury for the time being a statement of the number of days during which he shall have been so employed, and an account of the travelling and other expences incurred by him in respect of such employment; and the said lords commissioners shall make an order for the amount to be paid to such barrister.

58. And be it enacted, that in all elections whatever of members to serve in any future parliament no inquiry shall be permitted at the time of polling, as to the right of any person to vote, except only as follows; that is to say, that the returning officer or his respective deputy shall, if required on behalf of any candidate, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or any of them, and no other:—

1. *Are you the same person whose name appears as A. B. on the register of voters now in force for the county of* [or "for the riding, parts or division, &c." or "for the city, &c." as the case may be]?
2. *Have you already voted, either here or elsewhere, at this election for the county of* [or "for the riding, parts or division of the county of", or "for the city or borough of", as the case may be]?
3. *Have you the same qualification for which your name was originally inserted in the register of voters now in force for the county of, &c.* [or "for the riding, &c." or "for the city, &c." as the case may be, specifying in each case the particulars of the qualification as described in the register]?

No inquiry at the time of election, except as to the identity of the voter, the continuance of his qualification, and whether he has voted before at same election.

Form of questions as to those points.

And if any person shall wilfully make a false answer to any of the questions aforesaid, he shall be deemed guilty of an indictable misdemeanor, and shall be punished accordingly; and the returning officer or his deputy, or a commissioner or commissioners to be for that purpose by him or them appointed, shall (if required on behalf of any candidate at the time aforesaid) administer an oath (or in case of a Quaker or Moravian, an affirmation) to any voter in the following form; (that is to say,)

Oath to be administered if required.

'You do swear, [or, being a Quaker or Moravian, "do affirm,"] that you are the same person whose name appears as A. B. on the register of voters now in force for the county of [or "for the riding, parts or division of the county of", or "for the city or borough of", as the case may be], *and that you have not before voted, either here or elsewhere, at the present election for the said county, [or "for the said riding, parts or division of the said county," or "for the said city or borough," as the case may be]. So help you God.'*

Form of oath.

And no elector shall hereafter at any such election be required to take any oath or affirmation, except as aforesaid, either in proof of his freehold or of his residence, age or other qualification or right to vote, any law or statute, local or general, to the contrary notwithstanding; and no person claiming to vote at any such election shall be excluded from voting thereat, except by reason of its appearing to the returning officer or his respective deputy, upon putting such questions as aforesaid, or any of them, that the person so claiming to vote is not the same person whose name appears on such register as aforesaid, or that he has previously voted at the same election, or that he has not the same qualification for which his name was originally inserted in such register, or except by reason of such person refusing to take the said oath or make the said affirmation, or to take or make the oath or affirmation against bribery, or any other oath or affirmation now required by law, and not hereby dispensed with; and no scrutiny shall hereafter be allowed by or before any returning

No other oath as to qualification.

No scrutiny by returning officer.

officer with regard to any votes given or tendered at any election of a member or members to serve in any future parliament; any law, statute or usage to the contrary notwithstanding.

Persons excluded from the register by the barrister may tender their votes at elections.

Tender to be recorded.

Correctness of the register to be questionable before a committee of the House of Commons.

59. Provided always, and be it enacted, that any person whose name shall have been omitted from any register of voters in consequence of the decision of the barrister who shall have revised the lists from which such register shall have been formed may tender his vote at any election at which such register shall be in force, stating at the time the name or names of the candidate or candidates for whom he tenders such vote, and the returning officer or his deputy shall enter upon the poll book every vote so tendered, distinguishing the same from the votes admitted and allowed at such election.

60. Provided also, and be it enacted, that, upon petition to the House of Commons, complaining of an undue election or return of any member or members to serve in parliament, any petitioner, or any person defending such election or return, shall be at liberty to impeach the correctness of the register of voters in force at the time of such election, by proving that in consequence of the decision of the barrister who shall have revised the lists of voters from which such register shall have been formed the name of any person who voted at such election was improperly inserted or retained in such register, or the name of any person who tendered his vote at such election improperly omitted from such register; and the select committee appointed for the trial of such petition shall alter the poll taken at such election according to the truth of the case, and shall report their determination thereupon to the House, and the House shall thereupon carry such determination into effect, and the return shall be amended, or the election declared void, as the case may be, and the register corrected accordingly, or such other order shall be made as to the House shall seem proper.

Sheriffs of the divided counties to fix the time and preside at elections.

61. And be it enacted, that the Sheriffs of Yorkshire and Lincolnshire, and the Sheriffs of the counties divided by this Act, shall duly cause proclamation to be made of the several days fixed for the election of a knight or knights of the shire for the several ridings, parts, and divisions of their respective counties, and shall preside at the election by themselves or their lawful deputies.

Commencement and continuance of polls at county elections.

62. And be it enacted, that at every contested election of a knight or knights to serve in any future parliament for any county, or for any riding, parts, or division of a county, the polling shall commence at nine o'clock in the forenoon of the next day but two after the day fixed for the election, unless such next day but two shall be Saturday or Sunday, and then on the Monday following, at the principal place of election, and also at the several places to be appointed as hereinafter directed for taking polls; and such polling shall continue for two days only, such two days being successive days; (that is to say) for seven hours on the first day of polling, and for eight hours on the second day of polling; and no poll shall be kept open later than four o'clock in the afternoon of the second day; any statute to the contrary notwithstanding.

Counties to be divided into districts for polling.

63. And be it enacted, that the respective counties in England and Wales, and the respective ridings, parts and divisions of counties, shall be divided into convenient districts for polling, and in each district shall be appointed a convenient place for taking the poll at all elections of a knight or knights of the shire to serve in any future parliament, and such districts and places for taking the poll shall be settled and appointed by the Act to be passed in this present parliament for the purpose of settling and describing the divisions of the counties enumerated in the Schedule marked

(F.) to this Act annexed; provided that no county, nor any riding, parts, or division of a county, shall have more than fifteen districts and respective places appointed for taking the poll for such county, riding, parts or division.

64. And be it enacted, that at every contested election for any county or riding, parts or division of a county, the Sheriff, Under-sheriff, or Sheriff's deputy, shall, if required thereto by or on behalf of any candidate, on the day fixed for the election, and if not so required may, *if it shall appear to him expedient*, cause to be erected a reasonable number of booths for taking the poll at the principal place of election, and also at each of the polling places so to be appointed as aforesaid, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the several parishes, townships, and places for which such booth is respectively allotted; and no person shall be admitted to vote at any such election in respect of any property situate in any parish, township, or place, except at the booth allotted for such parish, township, or place, and if no booth shall be so allotted for the same, then at any of the booths for the same district; and in case any parish, township, or place shall happen not to be included in any of the districts to be appointed, the votes in respect of such property situate in any parish, township, or place so omitted shall be taken at the principal place of election for the county or riding, parts or division of the county, as the case may be.

As to booths at the polling places for counties.

No voter to poll out of the district where his property lies.

65. And be it enacted, that the Sheriff shall have power to appoint deputies to preside and clerks to take the poll at the principal place of election, and also at the several places appointed for taking the poll for any county, or any riding, parts or division of a county; and that the poll clerks employed at those several places shall at the close of each day's poll enclose and seal their several books, and shall publicly deliver them, so enclosed and sealed, to the Sheriff, Under-sheriff, or Sheriff's deputy presiding at such poll, who shall give a receipt for the same, and shall, on the commencement of the poll on the second day, deliver them back so enclosed and sealed to the persons from whom he shall have received them; and on the final close of the poll every such deputy who shall have received any such poll books shall forthwith deliver or transmit the same so enclosed and sealed to the Sheriff or his Under-sheriff, who shall receive and keep all the poll books unopened until the reassembling of the court on the day next but one after the close of the poll, unless such next day but one shall be Sunday, and then on the Monday following, when he shall openly break the seals thereon, and cast up the number of votes as they appear on the said several books, and shall openly declare the state of the poll, and shall make proclamation of the member or members chosen, not later than two o'clock in the afternoon of the said day.

Provision as to Sheriff's deputies, the custody of poll books, and final declaration of the poll for counties.

66. And be it enacted, that in all matters relative to the election of knights or a knight of the shire to serve in any future parliament for any county, or for any riding, parts or division of a county, the Sheriff of the county, his Under-sheriff, or any lawful deputy of such Sheriff, shall have power to act in all places having any *exclusive jurisdiction or privilege whatsoever*, in the same manner as such Sheriff, Under-sheriff, or deputy may act within any part of such Sheriff's ordinary jurisdiction.

Sheriff in county elections may act in places of exclusive jurisdiction.

69. Provided always, and be it enacted, that so far as relates to the several boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford, as defined by this Act, the said several boroughs shall be divided into convenient districts for polling, and there shall be appointed in each district a convenient place for taking the poll at all elections of members to serve in any future parliament for each of the said boroughs, which

Polling districts to be appointed for Shoreham, Cricklade, Aylesbury and

East Retford.

When returning officers may close the poll before the expiration of the time fixed. Adjournment of poll in case of riot.

districts and places for taking the poll shall be settled and appointed by an Act to be passed in this present parliament.

70. And be it enacted, that nothing in this Act contained shall prevent any Sheriff or other returning officer, or the lawful deputy of any returning officer, from closing the poll previous to the expiration of the time fixed by this Act, in any case where the same might have been lawfully closed before the passing of this Act; *and that where the proceedings at any election shall be interrupted or obstructed by any riot or open violence*, the Sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause *finally* close the poll, but in case the proceeding shall be so interrupted or obstructed at any particular polling place or places, shall adjourn the poll at such place or places only until the following day, and if necessary shall further adjourn the same until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed to take the poll at such place or places; and any day whereon the poll shall have been so adjourned shall not, as to such place or places, be reckoned one of the two days of polling at such election within the meaning of this Act; and wherever the poll shall have been so adjourned by any deputy of any Sheriff or other returning officer, such deputy shall *forthwith* give notice of such adjournment to the Sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen, until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and delivered or transmitted to such Sheriff or other returning officer; any thing hereinbefore contained to the contrary notwithstanding.

Candidates or persons proposing a candidate without his consent, to be at the expense of booths and poll clerks. Limitation of expense.

71. And be it enacted, that from and after the end of this present parliament all booths erected for the convenience of taking polls shall be erected at the joint and equal expense of the several candidates, and the same shall be erected *by contract with the candidates*, if they shall think fit to make such contract, or if they shall not make such contract, *then* the same shall be erected by the Sheriff or other returning officer at the expense of the several candidates as aforesaid, subject to such limitation as is hereinafter next mentioned; (that is to say,) that the expense to be incurred for the booth or booths to be erected at the principal place of election for any county, riding, parts or division of a county, or at any of the polling places so to be appointed as aforesaid, shall not exceed the sum of forty pounds in respect of any one such principal place of election or any one such polling place; and that the expense to be incurred for any booth or booths to be erected for any parish, district or part of any city or borough shall not exceed the sum of twenty-five pounds in respect of any one such parish, district or part; and that all deputies appointed by the Sheriff or other returning officer shall be paid each two guineas by the day, and all clerks employed in taking the poll shall be paid each one guinea by the day, at the expense of the candidates at such election; provided always, that if any person shall be proposed without his consent, then the person so proposing him shall be liable to defray his share of the said expenses in like manner as if he had been a candidate: provided also, that the Sheriff or returning officer may, if he shall think fit, *instead of erecting such booth or booths as aforesaid, procure or hire and use any houses or other buildings* for the purpose of taking the poll therein, subject always to the same regulations, provisions, liabilities, and limitations of expense as are hereinbefore mentioned with regard to booths for taking the poll.

Houses may be hired for polling in, instead of booths.

72. And be it enacted, that the Sheriff or other returning officer shall, *before* the day fixed for the election, cause to be made for the use of each booth or other polling place at such election, *a true copy of the register of voters, and shall under his hand certify every such copy to be true.*

Certified copies of the register of voters for each booth.

73. And be it enacted, that every deputy of a Sheriff or other returning officer shall have the same power of administering the oath and affirmations required by law, and of appointing commissioners for administering such oaths and affirmations as may by law be administered by commissioners, as the Sheriff or other returning officer has by virtue of this or any other Act, and subject to the same regulations and provisions in every respect as such Sheriff or other returning officer.

Powers of deputies of returning officers.

74. And be it enacted, that from and after the end of this present parliament, every person who shall have a right to vote in the election of a member for the borough of *Monmouth*, in respect of the towns of Newport or Usk, shall give his vote at Newport or Usk respectively before the deputy for each of such towns, whom the returning officer of the borough of Monmouth is hereby authorized and required to appoint; and every person who shall have a right to vote in the election of a member for any shire-town or borough, in respect of any place named in the first column of the Schedule marked (E.) to this Act annexed, shall give his vote at such place before the deputy of such place, whom the returning officer of the shire-town or borough is hereby authorized and required to appoint; and every person who shall have a right to vote in the election of a member for the borough composed of the towns of Swansea, Loughor, Neath, Aberavon, and Kenfig, shall give his vote at the town in respect of which he shall be entitled to vote, (that is to say,) at Swansea before the portreeve of Swansea, and at each of the other towns before the deputy of such town, whom the said portreeve is hereby authorized and required to appoint; and at every contested election for the borough of Monmouth, or for any shire-town or borough named in the second column of the said Schedule (E.), or for the borough composed of the said five towns, or for the borough of Brecon, the polling shall commence on the day next after the day fixed for the respective election, unless such next day be Saturday or Sunday, and then on the Monday following, as well at Monmouth as at Newport and Usk respectively, and as well at the shire-town or borough as at each of the places sharing in the election therewith respectively, and as well at Swansea as at each of the four other towns respectively; and such polling shall continue for two days only, such two days being successive days, (that is to say,) for seven hours on the first day of polling, and for eight hours on the second day of polling, and that the poll shall on no account be kept open later than four o'clock in the afternoon of such second day; and the returning officer for the borough of Monmouth shall give to the deputies of Newport and Usk respectively, and the returning officer of every shire-town or borough named in the second column of the said Schedule (E.) shall give to the deputy for each of the places sharing in the election for such shire-town or borough, notice of the day fixed for such respective election, and shall before the day fixed for such respective election cause to be made, and to be delivered to every such deputy, a true copy of the register of voters for the borough of Monmouth or for such shire-town or borough, as the case may be, and shall under his hand certify every such copy to be true; and the portreeve of the town of Swansea shall give notice of the day of election to the deputy for each of the towns of Loughor, Neath, Aberavon, and Kenfig, and shall in like manner cause to be made, and to be delivered to every such deputy, a true and certified copy of the register of voters for

Regulations respecting polling, &c. for the borough of Monmouth, and for the contributory boroughs in Wales.

the borough composed of the said five towns; and the respective deputies for Newport and Usk, and for the respective places named in the first column of the said Schedule (E.), as well as for the towns of Loughor, Neath, Aberavon, and Kenfig, shall respectively take and conduct the poll, and deliver or transmit the poll books, in the same manner as the deputies of the returning officers of the cities and boroughs in England are hereinbefore directed to do, and shall have the same powers and perform the same duties in every respect as are respectively conferred and imposed on the said deputies by this Act: Provided always, that where there shall be a mayor, portreeve, or other chief municipal officer, in any town or place for which the returning officer or the portreeve of Swansea is required to appoint a deputy as aforesaid, such returning officer or the portreeve of Swansea, as the case may be, is hereby required to appoint such chief municipal officer for the time being to be such deputy for such town or place.

As to appointment of deputies in Wales.

All election laws to remain in force, except where superseded by this Act.

75. And be it enacted, that all laws, statutes, and usages now in force respecting the election of members to serve in parliament for that part of the United Kingdom called England and Wales, shall be and remain, and are hereby declared to be and remain, in full force, and shall apply to the election of members to serve in parliament for all the counties, ridings, parts, and divisions of counties, cities, and boroughs, hereby empowered to return members, as fully and effectually as if the same respectively had heretofore returned members, except so far as any of the said laws, statutes, or usages are repealed or altered by this Act, or are inconsistent with the provisions thereof.

Penalties on officers for breach of duty.

76. And be it enacted, that if any Sheriff, returning officer, barrister, overseer, or any person whatsoever, shall wilfully contravene or disobey the provisions of this Act or any of them, with respect to any matter or thing which such Sheriff, returning officer, barrister, overseer, or other person is hereby required to do, he shall for such his offence be liable to be sued in an action of debt in any of his Majesty's Courts of record at Westminster for the penal sum of five hundred pounds, and the jury before whom such action shall be tried may find their verdict for the full sum of five hundred pounds, or for any less sum which the said jury shall think it just that he should pay for such his offence; and the defendant in such action, being convicted, shall pay such penal sum so awarded, with full costs of suit, to the party who may sue for the same: Provided always, that no such action shall be brought except by a person being an elector or claiming to be an elector, or a candidate, or a member actually returned, or other party aggrieved: Provided also, that the remedy hereby given against the returning officer shall not be construed to supersede any remedy or action against him according to the law now in force.

Writs, &c. to be made conformable to this Act.

77. And be it enacted, *that all writs* to be issued for the election of members to serve in all future parliaments, and all mandates, precepts, and instruments, proceedings, and notices consequent upon such writs, shall be and the same are hereby authorized *to be framed and expressed in such manner and form as may be necessary* for the carrying the provisions of this Act into effect.

This Act not to extend to universities of Oxford and Cambridge.

78. Provided always, and be it enacted, that nothing in this Act contained shall extend to or in anywise affect the election of members to serve in parliament for the universities of Oxford or Cambridge, or shall entitle any person to vote in the election of members to serve in parliament for the city of Oxford or town of Cambridge in respect of the occupation of any chambers or premises in any of the colleges or halls of the universities of Oxford or Cambridge.

79. And be it enacted, that throughout this Act, wherever the words "city or borough," "cities or boroughs," may occur, those words shall be construed to include, except there be something in the subject or context manifestly repugnant to such construction, all towns corporate, cinque ports, districts, or places within England and Wales which shall be entitled after this Act shall have passed to return a member or members to serve in parliament, other than counties at large, and ridings, parts, and divisions of counties at large, and shall also include the town of Berwick-upon-Tweed; and the words "*returning officer*" shall apply to every person or persons to whom, by virtue of his or their office, either under the present Act, or under any former law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in parliament, by whatever name or title such person or persons may be called; and the words "parish or township" shall extend to every parish, township, vill, hamlet, district, or place maintaining its own poor; and the words "overseers of the poor" shall extend to all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called, and in whatsoever manner they may be appointed, and that all matters by this Act directed to be done by the overseers of a parish or township may be lawfully done by the major part of such overseers, and that wherever any notice is by this Act required to be given to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business, or shall be sent by the post, addressed by a sufficient direction, to the overseers of the particular parish or township, or to any one of them, either by their or his Christian name and surname, or by their or his name of office; and that all provisions in this Act relative to any matters to be done by or with regard to justices of the peace for counties, or sessions of the peace for counties, or clerks of the peace for counties, or treasurers of counties, shall extend to the justices, sessions, clerks of the peace, and treasurers of the several ridings of Yorkshire and parts of Lincolnshire, and that the clerk of the peace for the time being for the borough of Newport in the Isle of Wight shall for the purposes of this Act be deemed and taken to be the clerk of the peace for the county of the Isle of Wight, and that all the said respective justices, sessions, and clerks of the peace shall have power to do the several matters required by this Act, as well within places of exclusive jurisdiction as without; and that no misnomer or inaccurate description of any person or place named or described in any Schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in anywise prevent or abridge the operation of this Act with respect to such person or place, provided that such person or place shall be so designated in such schedule, list, register, or notice as to be commonly understood.

Of the sense in which words in this Act are to be understood:

"city or borough."

"*Returning officer.*"

"Parish or township."

"Overseers of the poor."

"Justices of the peace for counties, &c."

Misnomer not to vitiate.

Schedule (C.)

Principal Places to be Boroughs.	<i>Returning Officers.</i>
Manchester (Lancashire) {	The boroughreeve and constables of Manchester. The two bailiffs of Birmingham. The mayor of Leeds.
Birmingham (Warwickshire) ..	
Leeds (Yorkshire)	
Greenwich (Kent).	The master cutler.
Sheffield (Yorkshire).....	
Sunderland (Durham).	
Devonport (Devonshire).	Constable of the manor of the deanery of Wolverhampton.
Wolverhampton (Staffordshire) {	
Tower Hamlets (Middlesex).	
Finsbury (Middlesex).	
Mary-le-bone (Middlesex).	
Lambeth (Surrey).	The boroughreeves of Great and Little Bolton.
Bolton (Lancashire)	
Bradford (Yorkshire).	
Blackburn (Lancashire).	
Brighton (Sussex).	
Halifax (Yorkshire).	The mayor of Macclesfield.
Macclesfield (Cheshire)	
Oldham (Lancashire).	The mayor of Stockport.
Stockport (Cheshire)	
Stoke-upon-Trent (Staffordshire).	
Stroud (Gloucestershire).	

Schedule (D.)

Principal Places to be Boroughs.	<i>Returning Officers.</i>
Ashton-under-Lyne (Lancashire)	The mayor of Ashton-under-Lyne.
Bury (Lancashire).	
Chatham (Kent).	
Cheltenham (Gloucestershire).	The high bailiff of Kidderminster.
Dudley (Worcestershire).	
Frome (Somersetshire).	
Gateshead (Durham).	The mayor of Kendal.
Huddersfield (Yorkshire).	
Kidderminster (Worcestershire)	
Kendal (Westmorland)	The boroughreeve of Salford.
Rochdale (Lancashire).	
Salford (Lancashire)	
South Shields (Durham).	The mayor of Walsall.
Tynemouth (Northumberland).	
Wakefield (Yorkshire).	
Walsall (Staffordshire)	
Warrington (Lancashire).	
Whitby (Yorkshire).	
Whitehaven (Cumberland).	
Merthyr Tydvil (Glamorganshire).	

Schedule (E.)

Places sharing in the Election of Members.	Shire-Towns or Principal Boroughs.	County in which such Boroughs are situated.
Amlwch, Holyhead, and Llangefni } sharing with	Beaumaris	Anglesey.
Aberystwith, Lampeter, and Adpar } sharing with	Cardigan	Cardiganshire.
Llanelly sharing with	Caermarthen ..	Caermarthenshire.
Pwllheli Nevin Conway Bangor Criccieth } sharing with	Caernarvon	Caernarvonshire.
Ruthin Holt Town of Wrexham. } sharing with	Denbigh	Denbighshire.
Rhyddlan Overton Caerwis Caergwryley St. Asaph Holywell Mold } sharing with	Flint	Flintshire.
Cowbridge Llantrisant } sharing with	Cardiff	Glamorganshire.
Llanidloes Welsh Pool Machynlleth Llanfyllin Newtown } sharing with	Montgomery . .	Montgomeryshire.
Narberth Fishguard } sharing with	Haverfordwest ..	Pembrokeshire.
Tenby Wiston Town of Milford .. } sharing with	Pembroke	Pembrokeshire.
Knighton Rhayder Kevinleaze Knucklas Town of Presteigne } sharing with	Radnor	Radnorshire.

Schedule (E. 2.)

Places sharing in the Election of Members.	Places therein from which the Seven Miles are to be calculated.
Newport	The Market Place.
Usk	The Town Hall.
Aberystwith	The Bridge over the Rheidal.
Lampeter	The Parish Church.
Adpar	The Bridge over the Teivi.
Pwllheli	The Guildhall.
Nevin	The Parish Church.
Conway	The Parish Church.
Criccieth	The Castle.
Ruthin	The Parish Church called St. Peter's.
Holt	The Parish Church.
Rhyddlan	The Parish Church.
Overton	The Parish Church.
Caerwis	The Parish Church.
Caergwrley	The Parish Church of Hope.
Cowbridge	The Town Hall.
Llantriassent	The Town Hall.
Tenby	The Parish Church.
Wiston	The Parish Church.
Knighton	The Parish Church.
Rhayder	The Market Place.
Keville	The Parish Church.
Knucklas	The Site of the ancient Castle of Cnwglas.
Swansea	The Town Hall.
Loughor	The Parish Church.
Neath	The Town Hall.
Aberavon	The Bridge over the Avon.
Kenfig	The Parish Church of Lower Kenfig.

Schedule (F.)

COUNTIES TO BE DIVIDED.

Cheshire.	Northumberland.
Cornwall.	Northamptonshire.
Cumberland.	Nottinghamshire.
Derbyshire.	Shropshire.
Devonshire.	Somersetshire.
Durham.	Staffordshire.
Essex.	Suffolk.
Gloucestershire.	Surrey.
Kent.	Sussex.
Hampshire.	Warwickshire.
Lancashire.	Wiltshire.
Leicestershire.	Worcestershire.
Norfolk.	

Schedule (F. 2.)

COUNTIES TO RETURN THREE MEMBERS EACH.

Berkshire.
Buckinghamshire.
Cambridgeshire.
Dorsetshire.

Herefordshire.
Hertfordshire.
Oxfordshire.

Schedule (G.)

Cities and Towns and Counties thereof.	Counties at large in which Cities and Towns and Counties thereof are to be included.
Caermarthen	Caermarthenshire.
Canterbury.....	Kent.
Chester	Cheshire.
Coventry	Warwickshire.
Gloucester	Gloucestershire.
Kingston-upon-Hull	East Riding of Yorkshire.
Lincoln	The Parts of Lindsey, Lincolnshire.
London	Middlesex.
Newcastle-upon-Tyne	Northumberland.
Poole	Dorsetshire.
Worcester	Worcestershire.
York and Ainsty	North Riding of Yorkshire.
Southampton	Hampshire.

IN THIS COURT the High Sheriff's "*duties are neither entirely ministerial nor wholly judicial, they are of a mixed nature (a).*" Such was the character of his duties before the Reform Act, and such are they now; for if they differ, they differ in degree and not in kind. His *ministerial* duties consist in giving notices, assembling the electors, providing books, reading the precept, &c.; his *judicial* in excluding (b), registering, admitting votes, &c.

Sheriff's duties, of what kind.

In what his ministerial and in what his judicial consist.

(a) *Cullen v. Morris*, 2 Stark. Rep. 577, distinguishing and explaining, if not overruling, *Ashby v. White*, Lord Raym. Rep. 938; see too *Green v. Milward*, *ibid.*; *Drew v. Coulton*, *Milward v. Sargeant*, 1 East, 577; *Williams v. Lewis*, Peake's Add. Ca. 157; *Spilsbury v. Micklethwaite*, 1 Taunt. Rep. 146.

(b) By 2 Will. 4, c. 45, s. 58, the returning officer is the sole judge of the sufficiency of the voter's answer to

any of the three questions therein set forth, and may admit or reject the vote accordingly; if the voter refuses to take the oath therein prescribed, the returning officer or his deputy may reject such voter, and if he so acts from no *improper motive* but from an honest intention to discharge his duty, no action will lie against him for doing so. *Cullen v. Morris*, *supra*; *New Sarum*, P. & K. 255; Rogers on Elect. chap. x.

How far old law affected by the Reform Act.

Before entering more minutely into the extent and effect of the revision of our law touching the constitution of this Court, it must be premised that all election laws remain in force, except where repealed or altered, or are inconsistent with the provisions of the recent statute of William the Fourth; much therefore of the *old* law (if we may be allowed the expression) necessarily remains; and what that is must be the first object of our inquiry as a key to the construction of the statute itself.

New parliament how summoned.

TO SUMMON THE PARLIAMENT appertains to the Queen, for she is the only branch of the legislature that has a *separate existence*, and is capable of performing any act at a time when no parliament is in being (c); and therefore in *case of a new parliament*, the House of Commons is convened by virtue of an order (d) (formerly by warrant) from her Majesty in council to the Lords High Chancellors of Great Britain and Ireland, to issue out writs to the Sheriffs of every county for the election of all the members to serve for that county, and for every city and borough therein.

Her Majesty's Order for New Parliament.

Her Majesty having been pleased by the royal proclamation to dissolve the present parliament, is hereby pleased, with the advice of her privy council, to order that the Right Honourable the Lord High Chancellor of that part of the united kingdom called Great Britain and the Right Honourable the Lord High Chancellor of Ireland do respectively cause writs to be issued in due form and according to law, for the calling of a new parliament to meet at the city of Westminster, which writs are to be returnable on the day of next.

How vacancy is filled up during the sitting of parliament. Motion for Speaker's warrant.

After the parliament is assembled, AND DURING ITS CONTINUANCE, the House of Commons *alone* (e) have the power of issuing writs to fill up any vacancy occasioned by death, resignation, bankruptcy, removal by a committee of the house, acceptance of office, elevation to a peerage, or the like. In the event of a vacancy during its continuance, therefore, *on motion of a member*, the Speaker sends his warrant to the clerk of the crown, directing a new writ to be made and issued, which is thereupon done as in other cases.

(c) 1 Bl. Com. 15.

(d) D'Ewes, 2; 1 Roe on Elect. 246, n.

(e) D'Ewes; Journals, 307, 308; Lord Shaftesbury's case in the time of Charles II., 2 Hats. 233.

The Speaker's Warrant.

By virtue of an order of the House of Commons this day made.

Speaker's
warrant.

These are to require you to make out a new writ for the electing of a Burgess to serve in this present parliament for the borough of *A.*, in the room of *G. A.* who, since his election for the said borough, hath accepted the office of one of the commissioners for executing the office of lord high admiral, [*or "dead," as the case may be,*] for which this shall be your sufficient warrant.

Given under my hand this day of 1839.

James Abercrombie, Speaker.

To whom
directed.

To the Clerk of the Crown in Chancery.

If a vacancy be caused by *death or promotion to the peerage* during any recess (*f*) of the House, whether by prorogation or adjournment, the Speaker forthwith, on receiving the following certificate under the hands of two members, causes notice thereof to be inserted in the London Gazette, and at the expiration of fourteen days after the insertion of such notice in the Gazette, issues his warrant as in other cases, (subject to the *restrictions* imposed by the statute of 24 Geo. 3, sess. 2, c. 26, s. 4.)

Vacancy
during a
recess.

Certificate.

We whose names are underwritten, being two members of the House of Commons, do hereby certify that *M. P.*, late a member of the said House, serving as one of the knights of the shire for the county of , [*or as the case may be,*] died upon the day of , [*or "is become a peer of Great Britain, that a writ of summons hath been issued under the great seal of Great Britain to summon him to parliament," or as the case may be*]; and we give you this notice, to the intent that you may issue your warrant to the clerk of the crown to make out a new writ for the election of a knight to serve in parliament for the said county of , [*or as the case may be,*] in the room of the said *M. P.* Given under our hands this day of .

Certificate
by two mem-
bers to the
Speaker that
a vacancy
has occur-
red.

To the Speaker of the House of Commons.

Note, in case there be no Speaker, by death, by his seat being vacant, or by his absence out of the realm, it must be directed to one of his deputies appointed by section five of the above act.

To whom
directed if
there be no
Speaker.

In case of an adjudication of bankruptcy (g) against a member of the House of Commons, and the fiat be not annulled within twelve months, nor debts paid, nor security given for debts dis-

In case of
the bank-
ruptcy of a
member.

(*f*) Previously to the 10 Geo. 3, c. 41, there appears to have existed no power to order the issuing of a writ

during a recess; 4 Cobb. Parl. Deb. 511.

(*g*) 52 Geo. 3, c. 144.

puted, and costs, the major part of the commissioners shall, at the expiration of the twelve months, certify the same to the Speaker, and the election of such member shall be declared void.

Commissioners' certificate.

Certificate, form of.

Speaker's warrant thereon.

The Commissioners mentioned in the statute of 52 Geo. 3, c. 144, s. 2, were abolished by 1 & 2 Will. 4, c. 56; but it is conceived that the Commissioners of the new Court of Bankruptcy have the like powers as to this certificate, by the seventh and sixteenth sections thereof. The form of the certificate will be *mutatis mutandis* the same as the filling up a vacancy caused by death or promotion during a recess, and the Speaker's warrant issues in like manner.

The Writ on a General Election (h).

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, defender of the faith, and so forth: to the Sheriff of the county of Oxford, greeting. Whereas, by the advice and assent of our council for certain arduous and urgent affairs concerning us, the state and defence of our kingdom of Great Britain and the Church, we have ordered a certain parliament to be holden at our city of Westminster, on the day of next ensuing, and then to treat and have conference with the prelates, great men, and peers of our realm: We command and strictly enjoin you that (proclamation being made of the day and place aforesaid) two knights (i) of the most fit and discreet of the said county, girt with swords, [and of the University of Oxford two burgesses, and of the city of Oxford two citizens, and of the borough of *W.* one burgess, and of the borough of *B.* one burgess,] of the most sufficient and discreet, freely and indifferently,* by those who at your County Court to be holden for the purpose of the election shall be present, according to the form of the statutes in that case made and provided, you cause to be elected; and the names of those knights, citizens, and burgesses so to be elected (whether they be present or absent) you cause to be inserted in certain indentures to be thereupon made between you and those who shall be present at such election, and then at the day and place aforesaid you cause to come in such manner that the said knights for themselves and the commonalty of the said University, city, and boroughs respectively, may have from them full and suf-

(h) Parl. Hist. vol. 20, p. 382; Sim. on Elect. civ.; the ancient form of the writ is still adhered to (except so far as it may now be necessarily varied for the carrying the provisions of the Reform Act into effect, 2 Will. 4, c. 45, s. 77). See the *Protector's* form, from which it differs in the recital only, Rogers on Elect. p. 1, n.

(i) The writ must be framed and expressed according to the fact, naming the divisions of the county (*if divided*), the cities and boroughs, and

the number of members to be returned for each. 2 Will. 4, c. 45, s. 77, enacts, "that all writs to be issued for the election of members to serve in all future parliaments, and all mandates, precepts, instruments, proceedings, and notices consequent upon such writs, shall be and the same are hereby authorized to be framed and expressed in such manner and form as may be necessary for the carrying the provisions of this act into effect." *Ante*, p. 148.

ficient power to do and consent to those things which then and there by the common council of our said kingdom (by the blessing of God) shall happen to be ordained upon the aforesaid affairs, so that for want of such power or through an improvident election of the said knights, citizens, and burgesses, the aforesaid affairs may in no wise remain unfinished; *willing nevertheless, that neither you nor any other Sheriff (k) of this our said kingdom be in any wise elected*, and that the election in your full (l) county is made distinctly and openly under your seal and the seals of those who shall be present at such election, you do certify to us in our Chancery at the day and place aforesaid without delay, remitting to us one part of the aforesaid indentures annexed to these presents, together with this writ. Witness ourself at Westminster, the day of , in the year of our reign.

To be indorsed when returned.

"The execution of this writ appears in certain schedules hereunto annexed."

Writ on a New Election.

Victoria &c.: Whereas C. H., Esq., was lately chosen burgess for the borough of R. in your county for the present parliament, summoned to be holden in our city of Westminster, the day of now last past, and from thence by our several writs prorogued to and until Tuesday the day of , in the first year of our reign, and there now holden: And whereas, the Lower House of our said parliament have adjudged the election of the said F. W. to be void, [*or "the said C. H. is since dead," as the case may be,*] as by the letter of our right trusty and well beloved counsellor James Abercrombie, Speaker of your Lower House of parliament more fully and plainly appears: By means whereof our subjects of the said borough are deprived of a burgess to treat for the benefit of the said borough in our said parliament; nevertheless we being unwilling that the commonalty of our kingdom in our said parliament assembled to treat of the business concerning us, the state and defence of our kingdom and the church, from the aforesaid cause, should be diminished or lessened, whereby those affairs may not have a due end: We command you that in the place of the said F. W. within the borough aforesaid, one other fit and discreet burgess of the aforesaid borough (proclamation being first made of the premises and of the day and place) freely and indifferently, &c. [*as in last precedent from asterisk*] (m).

The writs are made out by the clerk of the crown in Chancery, and, after the election of the members, returned into the Crown Office there.

By whom
made out
and where
returned to.

By the 7 & 8 Will. 3, c. 25, s. 1, "upon every new parliament there shall be *forty* days between the teste and return of the writs of summons;" in practice, however, *fifty* days intervene, in consequence of the twenty-second article in the treaty of Union with Scotland; with regard to the issuing and return of

Time be-
tween teste
and return.

(k) As to the "*nolumus clause*," see ante, p. 13.

(l) 7 Hen. 4, c. 15.

(m) 2 Peckwell's Elect. Ca. 254.

Writs how transmitted and directed.

writs issued *on vacancies*, there is no precise interval fixed by law, nor any day mentioned in the writs whereupon the members returned is to attend in parliament. The writs are *directed* as in other cases (*o*). The writs, whether upon a new parliament or upon vacancies during parliament, are forthwith, after the receipt thereof, carried by the messenger or pursuivant of the great seal, or his deputy, to the general post-office in London, and there delivered to the postmaster or postmasters-general, or such other person as he or they shall depute to receive the same, (which deputation is required to be made,) who, on receipt of the writs, is to *give an acknowledgment in writing* to the person from whom they were received, expressing therein the time of such delivery, and shall keep a duplicate of such acknowledgment signed by both parties (*p*).

Memorandum of receipt of writ.

Transmitted to post-office.

Exceptions in the statute.

The same statute requires that the writs be dispatched free of postage by the *first post* (*q*) or *mail* after the receipt thereof, under covers respectively directed to the proper officer or officers, and accompanied with proper directions to the postmaster or deputy postmaster of the town or place, or nearest to the town or place where such officer or officers shall hold his or their office (*r*), requiring him forthwith to carry such writs to such office and deliver them to the officer to whom they are directed or to his deputy, *who is to give a memorandum under his hand to such postmaster*, acknowledging the receipt of such writ and setting forth the day and hour when the same was delivered; which memorandum is also to be signed by such postmaster, by whom it is to be transmitted by the first or second post afterwards to the postmaster-general at the general post-office in London, who is to make an entry thereof in a book for that purpose, and to file such memorandum along with the duplicate of the messenger's acknowledgment, that the same may be inspected or produced by any person interested in such election: except the writs to the Sheriffs of London and Middlesex, and all other officers whose office is in London, Westminster or Southwark, or within five miles thereof, which are to be delivered at their offices by the messenger of the great seal.

(*o*) *Ante*, p. 4, 7.

(*p*) 53 Geo. 3, c. 89.

(*q*) The writ for Glasgow at the last election was sent by a *special messenger* and not by post or mail, which circum-

stance was brought under the notice of the House, but how it was explained or how the inquiry ended we know not.

(*r*) Returning officers are to inform the post office of their residences.

The profits and indemnity to the messenger are regulated by s. 4 and 5, and every person concerned in the delivery of any writ, who shall wilfully neglect or delay to deliver it, or accept any fee, or do any other thing in violation of the statute, is to be deemed guilty of a misdemeanor, and liable to fine and imprisonment (s). Messenger's fees.

Violation of the statute a misdemeanor.

The Sheriff on receiving the writ must indorse thereon the day of receiving it, and give a receipt in writing to the person delivering it to him, specifying the day and hour of delivery; and within two days after the receipt thereof, cause proclamation to be made at the place where the ensuing election ought by law to be holden of a special County Court to be then holden for the purpose of the election only, on any day (Sunday excepted) not later from the day of making such proclamation than the 16th, nor sooner than the 10th day. Indorsement of the day of receiving writ.

Proclamation of the day and place of election.

The Proclamation, as indeed all notices of election, must be given publicly at the usual place or places, within the hours of eight o'clock in the forenoon and four o'clock in the afternoon, from the 25th day of October to the 25th day of March inclusive, and within the hours of eight and six from the 25th of March to the 25th of October inclusive, and not otherwise; and in default of observing this the election is utterly void (t). Proclamation when and where given.

The Court for the purpose of election in counties not divided by the Division and Boundary Act (u), must be holden at the most usual place of election during the forty years immediately preceding (v), except where otherwise specified by statute, as in the following counties:—

Brecknockshire, at Brecknock.

Radnorshire, at New Radnor or Rothergorry.

Montgomeryshire, at Montgomery or Machynlleth.

Denbighshire, at Denbigh or Wrexham.

Monmouthshire, at Monmouth or Newport (x).

Glamorganshire, at Bridgend (y).

(s) Sect. 6.

(t) 33 Geo. 3, c. 64; Simeon Elect. "Notices."

(u) 2 & 3 Will. 4, c. 64.

(v) 7 & 8 Will. 3, c. 25, s. 3.

(x) 27 Hen. 8, c. 26.

(y) 35 Geo. 3, c. 72. As to the polling places in these counties, see Schedule, N. 2 & 3 Will. 4, c. 64.

In counties
divided.

The Court, in counties divided, must be holden at the places mentioned in the Division and Boundary Act, or at any place in the neighbourhood of the place appointed by that Act, at which such Court may have before the Reform Act been held, or which may be convenient for that purpose, according to the discretion of the Sheriff (z).

DIVISION AND BOUNDARY ACT (a).

An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs, in England and Wales, in so far as respects the Election of Members to serve in Parliament.

[11th July, 1832.]

2 W. 4,
c. 45.

‘WHEREAS by an act passed in this present session of parliament, and intitled *An Act to amend the Representation of the People in England and Wales*, it is (amongst other things) provided that each of the counties enumerated in the Schedule marked (F.) thereto annexed should be divided into two divisions, which divisions should be settled and described by an act to be passed for that purpose in this present parliament, which act, when passed, should be deemed and taken to be part of the act now in recital as fully and effectually as if incorporated therewith; and that two knights of the shire should be chosen for each division of the said counties; and that the Court for the election of such knights of the shire should be held at the place to be named for that purpose in the act so to be passed for settling and describing the divisions of the said counties; and whereas the act so to be passed for settling and describing the division of the said counties, as in the said recited act is mentioned, is this present Act: and whereas the several counties enumerated in the said Schedule marked (F.) to the said recited act annexed are the several counties whereof the divisions are hereinafter settled and described: Be it therefore enacted by the King's most excellent Majesty, by, and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the two divisions of the county of CHESTER shall respectively be called the Northern Division and the Southern Division; and that such Northern Division shall include the whole of the respective Hundreds of MACCLESFIELD and BUCKLOW; and that such Southern Division shall include the whole of the several Hundreds of BROXTON, EDDISBURY, NANTWICH, NORTHWICH, and WIRRAL; and also the city and County of the city of CHESTER; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Knutsford, and for such Southern Division at the city of Chester.

Divisions of
Cheshire.

Divisions of
Cornwall.

2. And be it enacted, that the two divisions of the County of CORNWALL shall respectively be called the Eastern Division and the Western Division; and that such Eastern Division shall include the whole of the several Hundreds called EAST, WEST, LESNEWTH, STRATTON, and TRIGO; and also the following parishes and places in the Hundred of POWDER; (that is to say,) *St. Austell, St. Blazey, St. Denis, St. Ewe,*

(z) Sect. 34.

(a) 2 & 3 Will. 4, c. 64.

Posey, Gorran, Ladeck, Lanivary, Lantwithiel, Luxulion, Mewagisey, St. Mewan, St. Michael Carhaise, Rouch, St. Sampson's, St. Stephen's in Brannel, and Tynourdreth, together with all such part of the Hundred of PYDAR as will not be included in the Western Divisions of the County of Cornwall next hereinafter described; and that such ~~Western Division~~ shall include the whole of the respective Hundreds of KERRIER and PENWITH; all such part of the Hundred of POWDER as will not be included in the Eastern Division of the County of Cornwall, hereinbefore described; the following parishes in the Hundred of PYDAR; (that is to say,) *St. Agnes, Crantock, Cubert, Newlyn, St. Enoder, and Perranzabuloe*, and the SCILLY ISLANDS; and that the court for the election of knights of the shire shall be held for such Eastern Division at the borough of Bodmin, and for such Western Division at the borough of Truro.

3. And be it enacted, that the two divisions of the County of CUMBERLAND shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the several wards of CUMBERLAND, ESKDALE, and LEATH; and that such ~~Western Division~~ shall include the whole of the respective wards of ALLERDALE above DERWENT, and ALLERDALE below DERWENT; and that the court for the election of knights of the shire shall be held for such Eastern Division at the city of Carlisle, and for such Western Division at the borough of Cockermouth.

Divisions of
Cumber-
land.

4. And be it enacted, that the two divisions of the County of DERBY shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the respective Hundreds of HIGH PEAK, and SCARSDALE; and also so much of the wapentake of WIRKSWORTH as, by virtue of the order made at the quarter sessions of the peace for the County of Derby, held at the borough of Derby, on the twenty-eighth day of June, one thousand eight hundred and thirty-one, is comprised in the Bakewell division, as established by such order; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of APFLEETREE, MORLESTON and LITCHURCH, and REPTON and GRESLEY; and all such parts of the wapentake of WIRKSWORTH as will not be included within the Northern Division of the County of Derby last hereinbefore described; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Bakewell, and for such Southern Division at the County Hall in Derby.

Divisions of
Derby.

5. And be it enacted, that the two divisions of the County of DEVON shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Hundreds of BAMPTON, BLACK TORRINGTON, BRAUNTON, CREDITON, FREMINGTON, HALBERTON, HARTLAND, HAYBRIDGE, HEMYOCK, NORTH TAWTON and WINKLEIGH, SHERBEAR, SHERWILL, SOUTH-MOLTON, TIVERTON, WITHERIDGE, and WEST BUDLIGH; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of AXMINSTER, CLYTON, COLYTON, OTTERY ST. MARY, EAST BUDLIGH, LIFTON, EXMINSTER, TEIGNBRIDGE, HAYTOR, COLERIDGE, STANBOROUGH, ERMINGTON, PLYMPTON, ROBOROUGH, and TAVISTOCK; and also the castle of EXETER; and the Hundred of WONFORD, except such parts of that Hundred as are included in the limits of the city of Exeter as hereinafter described; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of South Molton, and for such Southern Division at the city of Exeter.

Divisions of
Devon.

6. And be it enacted, that the two divisions of the County of DUR-

Divisions of
Durham.

HAM shall respectively be called the Northern Division and the Southern Division; and that such Northern Division shall include the whole of the respective Wards of CHESTER and EASINGTON; and that such Southern Division shall include the whole of the respective Wards of DARLINGTON and STOCKTON; and that the court for the election of knights of the shire shall be held for such Northern Division at the city of Durham, and for such Southern Division at the town of Darlington.

Divisions of
Essex.

7. And be it enacted, that the two Divisions of the County of ESSEX shall respectively be called the Northern Division and the Southern Division; and that such Northern Division shall include the whole of the several Hundreds of CLAVERING, DUNMOW, FRESHWELL, HINCKFORD, LEXDEN, TENDRING, THURSTABLE, UTTLESFORD, WINSTREE, and WITTHAM; and that such Southern Division shall include the whole of the several Hundreds of BARSTABLE, BECONTREE, CHAFFORD, CHELMSFORD, DENGIE, HARLOW, ONGAR, ROCHFORD, and WALTHAM; and of the Liberty of HAVERING; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Braintree, and for such Southern Division at the town of Chelmsford.

Divisions of
Gloucester.

8. And be it enacted, that the two Divisions of the County of GLOUCESTER shall respectively be called the Eastern Division and the Western Division; and that such Eastern Division shall include the whole of the several Hundreds of CROWTHORNE and MINET, BRIGHTWELL'S BARROW, BRADLEY, RAPSGATE, BISLEY, LONGTREE, WHITSTONE, KITS-GATE, WESTMINSTER, DEERHURST, SLAUGHTER, CHELTENHAM, CLEEVE, TIBALDSTON, TEWKESBURY, and DUDSTONE and KING'S BARTON; and also the City and County of the City of GLOUCESTER and the Borough of CIRENCESTER; and that such Western Division shall include the whole of the several Hundreds of BERKLEY, THORNBURY, LANGLEY and SWINESHEAD, GRUMBALD'S ASH, PUCKLE CHURCH, LANCASTER DUCHY, BOTLOE, ST. BRIARVEL'S, WESTBURY, and BLIDESLOE; and the Hundreds of HENBURY and BARTON REGIS, except such parts of those Hundreds as are included in the limits of the city of Bristol as hereinafter described; and that the court for the election of knights of the shire shall be held for such Eastern Division at the city of Gloucester, and for such Western Division at the town of Dursley.

Divisions of
Hants.

9. And be it enacted, that the two divisions of the County of HANTS shall respectively be called the Northern Division and the Southern Division; and that such Northern Division shall include the whole of the several now existing Divisions of ALTON, ANDOVER, BASINGSTOKE, KING'S CLERE, DROXFORD, ODIHAM, PETERSFIELD, and WINCHESTER, as the same are now established by virtue of an order made by his Majesty's justices of the peace for the County of Hants at the Midsummer Quarter Sessions for the said County held at Winchester on the twenty-eighth day of June, one thousand eight hundred and thirty-one; and also all such other places, if any, in the said County of Hants, as are locally situated within or are surrounded by the said Sessional Divisions or any of them, and are not mentioned in the said order; and that such Southern Division shall include the whole of the several now existing Divisions of FAREHAM, LYMINGTON, RINGWOOD, ROMSEY, and SOUTHAMPTON, as the same are now established by the order aforesaid; and also all such other places, if any, in the said County of Hants, as are locally situated within or are surrounded by the said four last-mentioned Sessional Divisions of the said county or any of them, and are not mentioned in the said order; and also the Town and County of the Town of SOUTHAMPTON; and that the court for the election of knights of the shire shall be held for such

Northern Division at the city of Winchester, and for such Southern Division at the borough of Southampton.

10. And be it enacted, that the two divisions of the County of KENT shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the respective Lathes of St. AUGUSTINE and SHEPWAY, including the Liberty of ROMNEY MARSH, and of the Upper Division of the Lathe of SCRAY; and that such ~~Western Division~~ shall include the whole of the respective Lathes of SUTTON-AT-HONE and AYLESFORD, and of the Lower Division of the Lathe of SCRAY; and that the court for the election of knights of the shire shall be held for such Eastern Division at the city of Canterbury, and for such Western Division at the borough of Maidstone.

Divisions of
Kent.

11. And be it enacted, that the two divisions of the County of LANCASTER shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Hundreds of LONSDALE, AMOUNDERNESS, LEYLAND, and BLACKBURN; and that such ~~Southern Division~~ shall include the whole of the respective Hundreds of SALFORD and WEST DERBY; and that the court for the election of knights of the shire shall be held for such Northern Division at the borough of Lancaster, and for such Southern Division at the town of Newton.

Divisions of
Lancaster.

12. And be it enacted, that the two divisions of the County of LEICESTER shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Hundreds of WEST GOSCOTE, EAST GOSCOTE, and FRAMLAND; and also those two detached portions of the Hundred of GARTREE, which are situated on the east of the Hundred of EAST GOSCOTE; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of GARTREE (except as before mentioned), SPARKENHOE, and GUTHLAXTON; and also the Borough of LEICESTER and the liberties thereof; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Loughborough, and for such Southern Division at the borough of Leicester.

Divisions of
Leicester.

13. And be it enacted, that the two divisions of the County of NORFOLK shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the several Hundreds of BLOFIELD, CLAYERING, DEFWADE, DISS, EARSHAM, NORTH ERPINGHAM, SOUTH ERPINGHAM, EYNESFORD, EAST FLEGG, WEST FLEGG, FOREHOE, HAPPING, HENSTEAD, HUMBLEYARD, LODDON, TAVERSHAM, TUNSTEAD, and WALSHAM; and that such ~~Western Division~~ shall include the whole of the several Hundreds of FREEBRIDGE MARSHLAND, SMITHDON, FREEBRIDGE LYNN, CLACKCLOSE, BROTHERCROSS, GALLOW, HOLT, LAUNDITCH, SOUTH GREENHOE, GRIMSHOE, NORTH GREENHOE, WAYLAND, SHROPHAM, GILT CROSS, and MITFORD; and that the court for the election of Knights of the Shire shall be held for such Eastern Division at the city of Norwich, and for such Western Division at the town of Swaffham.

Divisions of
Norfolk.

14. And be it enacted, that the two Divisions of the County of NORTHAMPTON shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the Liberty of PETERBOROUGH, and of the several Hundreds of WILLYBROOK, POLEBROOK, HUXLOE, NAVISFORD, CORBY, HIGHAM FERRERS, ROTHWELL, HAMFORDSHOE, and ORLINGBURY; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of KING'S SUTTON, CHIFFING WARDEN, GREENS NORTON, CLEELY,

Divisions of
Northampton.

- TOWCESTER, FAWSLEY, WYMERSLEY, SPELHOE, NOBOTTLE GROVE, and GUILDSBOROUGH; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Kettering, and for such Southern Division at the borough of Northampton.
- Divisions of Northumberland.** 15. And be it enacted, that the two Divisions of the County of NORTHUMBERLAND shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Wards of BAMBOROUGH, COQUETDALE, GLENDALE, and MORPETH, and of the BERWICK BOUNDS; and that such ~~Southern Division~~ shall include the whole of the respective Wards of TYNE and CASTLE, and also the Town and County of the Town of NEWCASTLE-UPON-TYNE; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Alnwick, and for such Southern Division at the town of Hexham.
- Divisions of Nottingham.** 16. And be it enacted, that the two divisions of the county of NOTTINGHAM shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the respective Hundreds of BASSETLAW and BROXSTOW; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of RUSHCLIFFE, BINGHAM, NEWARK, and THURGARTON; and that the court for the election of knights of the shire shall be held for such Northern Division at the town of Mansfield, and for such Southern Division at the borough of Newark.
- Divisions of Salop.** 17. And be it enacted, that the two divisions of the County of SALOP shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Hundreds of OSWESTRY, PIMHILL, NORTH BRADFORD, and SOUTH BRADFORD, and of the Liberty of SHREWSBURY; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of BRIMSTREY, CHIRBURY, CONDOVER, FORD, MUNSLow, OVERS, PURSLOW, including CLUN, and STODDESTON, and of the Franchise of WENLOCK; and that the court for the election of knights of the shire shall be held for such Northern Division at the borough of Shrewsbury, and for such Southern Division at the town of Church Stretton.
- Divisions of Somerset.** 18. And be it enacted, that the two divisions of the County of SOMERSET shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the several Hundreds or Liberties of BATH FORUM, BEMPSTONE, BRENT and WRINGTON, BRUTON, CATSASH, CHEW and CHEWTON, NORTON FERRIS, FROME, GLASTON TWELVE HIDES, HAMPTON and CLAVERTON, HORETHORNE, KEYNSHAM, KILMERSDON, MELLs and LEIGH, PORTBURY, WELLOW, WELLS FORUM, WHITSTONE, WINTERSTOKE, and WITHAM FRIARY; and also the Hundred of HARTCLIFFE with BEDMINSTER, except such parts of that Hundred as are included in the limits of the city of Bristol as hereinafter described; and that such ~~Western Division~~ shall include the whole of the several Hundreds of ABDICK and BULSTONE, ANDERSFIELD, CANNINGTON, CARHAMPTON, CREWKERNE, NORTH CURRY, HOUNSBOROUGH, BERWICK, and COKER, HUNTSPILL and PURITON, KINGSBURY EAST, KINGSBURY WEST, MARTOCK, MILVERTON, NORTH PETHERTON, SOUTH PETHERTON, PITNEY, SOMERTON, STONE, TAUNTON and TAUNTON DEAN, TINTINHULL, WHITLEY, and WILLITON and FREEMANORS; and that the court for the election of knights of the shire shall be held for such Eastern Division at the city of Wells, and for such Western Division at the borough of Taunton.

19. And be it enacted, that the two divisions of the County of STAFFORD shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Hundreds of PIREHILL; TOTMONSLOW, and NORTH OFFLOW; and that such ~~Southern Division~~ shall include the whole of the respective Hundreds of SOUTH OFFLOW, SEISDON, and CUTTLESTONE; and that the court for the election of knights of the shire shall be held for such Northern Division at the borough of Stafford, and for such Southern Division at the city of Lichfield.

Divisions of
Stafford.

20. And be it enacted, that the two divisions of the County of SUFFOLK shall respectively be called the Eastern Division and the Western Division; and that such ~~Western Division~~ shall include the whole of the Liberty of BURY ST. EDMUND'S, and of the respective Hundreds of HARTESMERE and STOW; and that such ~~Eastern Division~~ shall include all such parts of the County of Suffolk as are not comprised in the Liberty of Bury St. Edmund's, or in either of the Hundreds of Hartesmere and Stow; and that the court for the election of knights of the shire shall be held for such Western Division at the borough of Bury St. Edmund's, and for such Eastern Division at the borough of Ipswich.

Divisions of
Suffolk.

21. And be it enacted, that the two divisions of the County of SURREY shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the several Hundreds of BRIXTON, KINGSTON, REIGATE, TANDRIDGE, and WALLINGTON; and that such ~~Western Division~~ shall include the whole of the several Hundreds of BLACKHEATH, COPTHORNE, EFFINGHAM, ELMBRIDGE, FARNHAM, GODALMING, GODLEY and CHERTSEY, WOKING and WOTTON; and that the court for the election of knights of the shire shall be held for such Eastern Division at the town of Croydon, and for such Western Division at the borough of Guildford.

Divisions of
Surrey.

22. And be it enacted, that the two divisions of the County of SUSSEX shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the several Rapes of LEWES, HASTINGS, and PEVENSEY; and that such ~~Western Division~~ shall include the whole of the several Rapes of ARUNDEL, BRAMBER, and CHICHESTER; and that the court for the election of knights of the shire shall be held for such Eastern Division at the borough of Lewes, and for such Western Division at the city of Chichester.

Divisions of
Sussex.

23. And be it enacted, that the two divisions of the County of WARWICK shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the Hundred of HEMLINGFORD, and of the County of the City of COVENTRY, and the RUGBY DIVISION, and the KIRBY DIVISION of the Hundred of KNIGHTLOW; and that such ~~Southern Division~~ shall include the whole of the respective Hundreds of BARLICHWAY and KINGTON, and the KENILWORTH DIVISION, and the SOUTHAM DIVISION of the Hundred of KNIGHTLOW; and that the court for election of knights of the shire shall be held for such Northern Division at the town of Coleshill, and for such Southern Division at the borough of Warwick.

Divisions of
Warwick.

24. And be it enacted, that the two divisions of the County of WILTSHIRE shall respectively be called the Northern Division and the Southern Division; and that such ~~Northern Division~~ shall include the whole of the several Hundreds of CHIPPENHAM, NORTH DAMERHAM, BRADFORD, MELKSHAM, POTTERNE and CANNINGS, CALNE, SELKLEY, RAMSBURY, WHORWELSDOWN, SWANBOROUGH, HIGHWORTH, CRICKLADE, and STAPLE,

Divisions of
Wilts.

KINGSBRIDGE and MALMSBURY; and that such ~~Southern Division~~ shall include the whole of the several Hundreds of KINWARDSTONE, HETTESBURY, BRANCH and DOLE, ELSTUB and EVERLEY, AMESBURY, WARMINSTER, MERE, SOUTH DAMERHAM, DOWNTON, CHALK, DUNWORTH, CAWDEN and CADWORTH, FRUSTFIELD, ALDERBURY, UNDERDITCH, and WESTBURY; and that the court for the election of knights of the shire shall be held for such Northern Division at the borough of DEVIZES, and for such Southern Division at the city of SALISBURY.

Divisions of
Worcester.

25. And be it enacted, that the two divisions of the County of WORCESTER shall respectively be called the Eastern Division and the Western Division; and that such ~~Eastern Division~~ shall include the whole of the several now existing Divisions of STOURBRIDGE, DUDLEY, DROITWICH, NORTHFIELD, BLOCKLEY, and PERSHORE, as the same are established by an order made by his Majesty's justices of the peace for the County of Worcester at the Epiphany quarter sessions for the year one thousand eight hundred and thirty-one; and also the borough of EVESHAM; and also all such other places, if any, in the said County of Worcester, as are locally situated within or are surrounded by the hereinbefore mentioned sessional divisions thereof, or any of them, and are not mentioned in the said order; and that such ~~Western Division~~ shall include the whole of the several now existing Divisions of UPROX, WORCESTER, HUNDRED HOUSE, and KIDDERMINSTER, as the same are established by the last-mentioned order; and also the City and County of the City of WORCESTER; and also all such other places, if any, in the said County of Worcester, as are locally situated within or are surrounded by the four lastly hereinbefore mentioned sessional divisions thereof, or any of them, and are not mentioned in the said order; and that the court for the election of knights of the shire shall be held for such Eastern Division at the borough of Droitwich, and for such Western Division at the city of Worcester.

Provision
for detached
parts of
counties.

26. And be it enacted, that the isolated parts of counties in England and Wales which are described in the Schedule to this Act annexed marked (M.) shall, as to the election of members to serve in parliament as knights of the shire, be considered as forming parts of the respective counties and divisions which are respectively mentioned in the fourth column of the said Schedule (M.) in conjunction with the names of such isolated parts respectively; and that every part of any county in England or Wales which is detached from the main body of such county, but for which no special provision is hereby made, shall be considered, for the purposes of the election of members to serve in parliament as knights of the shire, as forming part of that county (not being a county corporate), and of that division, riding, or parts, whereby such detached part shall be surrounded; but if any such detached part shall be surrounded by two or more counties, or divisions, ridings, or parts, then as forming part of that county, or division, riding, or parts, with which such detached part shall have the longest common boundary.

Provision
for the de-
tached parts
of hundreds,
&c.

27. And be it further enacted, that as respects the counties of York and Lincoln, and also the counties hereinbefore divided, except the counties of Hants and Worcester, every portion of any hundred, ward, wapentake, rape, lathe, or liberty of any such county which is detached from the main body of such hundred, ward, wapentake, rape, lathe, or liberty, and is also locally separated from that division of the county to which such main body is to belong under the provisions contained in this Act, or in the hereinbefore recited Act, but which is not subject to the provisions lastly hereinbefore contained, shall, for the purpose of the election of members to serve in parliament as knights of the shire, be considered as

forming part of that division, parts, or riding of the same county by which such detached portion is surrounded or to which it adjoins.

28. And be it enacted, that all liberties, franchises, and places having a separate jurisdiction, which are not hereinbefore expressly mentioned, (except the several cities and towns, and counties thereof respectively, of Bristol, Exeter, Lichfield, Norwich, and Nottingham, and except the several places by this Act comprised within the boundaries thereof respectively,) shall, as to the election of members to serve in parliament as knights of the shire, respectively be considered as included within the respective divisions hereby established in which such liberties, franchises, and places having a separate jurisdiction shall be locally situated.

Provision
for liberties,
&c.

29. And whereas by the hereinbefore recited Act it is also provided, that the respective counties in England and Wales, and the respective ridings, parts, and divisions of counties, should be divided into convenient districts for polling, and that in each district should be appointed a convenient place for taking the poll at all elections of a knight or knights of the shire to serve in any future parliament, and that such districts and places for taking the poll should be settled and appointed by the Act to be passed in this present parliament for the purpose of settling and describing the divisions of the counties enumerated in the Schedule marked (F.) to the said recited Act annexed, provided that no county, nor any riding, parts, or division of a county, should have more than fifteen districts and respective places appointed for taking the poll for such county, riding, parts, or division; and by the said recited Act it is also provided, that the several boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford, as thereby defined, should be divided into convenient districts for polling, and that there should be appointed in each district a convenient place for taking the poll at all elections of members to serve in any future parliament for each of the said boroughs, which districts and places for taking the poll should be settled and appointed by an Act to be passed in this present parliament; be it therefore enacted, that the poll for election of knights of the shire shall be taken at such places as in the Schedule to this Act annexed marked (N.) are mentioned in conjunction with the names of the counties, and of the ridings, parts, and divisions of counties, in which such places are respectively situated.

County
polling
places shall
be such as
are men-
tioned in
Schedule
(N.) to this
Act.

30. And be it enacted, that the justices of the peace for every county in England and Wales, and for each of the ridings of Yorkshire, and for the parts of Lindsey, and for the parts of Kesteven and Holland, in Lincolnshire, assembled at the quarter sessions to be holden in the month of October in the present year, or at some special sessions to be appointed by them so assembled as aforesaid which shall be holden on or before the last day of October in the present year, shall divide their respective counties, and ridings, parts, and divisions of counties, into convenient districts for polling, and shall assign one of such districts to every polling place mentioned in the said Schedule marked (N.) to this Act annexed; and that a list describing the districts named in every such assignment, and naming the polling places to which such districts are respectively assigned, shall be lodged with the clerk of the peace of the county, riding, or parts, who shall forthwith cause copies of such list to be printed, and shall deliver a copy of such list to every person who shall apply for the same, upon payment of one shilling for each copy.

Polling
districts for
counties to
be settled
by justices.

31. Provided always, and be it enacted, that for the purpose of assigning such districts to every polling place as aforesaid, every liberty, franchise, and place having a separate or exclusive jurisdiction shall be considered as being within that county, and within that division, riding, or

In what
counties,
&c. places
having se-

parate jurisdiction are to be considered.

Polling places for New Shoreham, &c.

Polling districts for New Shoreham, &c. to be settled by justices.

Election or poll may take place at places in the neighbourhood of those named in this Act. Contents and boundaries shall be such as are set forth in Schedule (O.) to this Act.

parts, in which such liberty, franchise, or place is placed by this Act, or by the Act hereinbefore recited, or in which the same is locally situated: Provided nevertheless, that the justices of the peace for the Isle of Ely, assembled at the quarter sessions for the said Isle of Ely to be holden in the month of October in the present year, or at some special sessions to be appointed by them, so assembled as aforesaid, which shall be holden on or before the last day of October in the present year, shall divide the said Isle of Ely into convenient districts for polling, and shall assign one of such districts to every polling place within the said Isle of Ely mentioned in the said Schedule (N.); and that a list, describing the districts named in such assignment, and naming the polling places to which such districts are respectively assigned, shall be lodged with the clerk of the peace for the said Isle of Ely, who shall allow the same, or a copy thereof, to be inspected at his office at all times.

32. And be it enacted, that the poll for the election of members to serve in parliament for the said several boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford shall be taken at the place or places which in the Schedule to this Act annexed marked (N. 2.) is or are mentioned in conjunction with the names of such several boroughs respectively.

33. And be it enacted, that the justices of the peace for the respective counties in which the boroughs of New Shoreham, Cricklade, and East Retford are situated, shall, at the quarter sessions to be holden in the month of October in the present year, divide the said boroughs of New Shoreham, Cricklade, and East Retford into convenient districts for polling, and shall assign one of such districts to every polling place for the said boroughs of New Shoreham, Cricklade, and East Retford, mentioned in the said Schedule to this Act annexed marked (N. 2.); and that a list describing the districts named in such assignment, and naming the polling places to which such districts are respectfully assigned, shall be lodged with the returning officer of the respective borough, who shall forthwith cause copies of such list to be printed, and to be fixed on the doors of the several churches and chapels within the borough for which such districts are assigned.

34. And be it enacted, that, if it shall seem fit to the Sheriff, the court for the election of knights of the shire may be held, or the poll may be taken, at any place or spot in the neighbourhood of any place appointed by this Act for holding such court or taking such poll respectively, at which such court or poll may have heretofore been held or taken, or which may be convenient for either of those purposes; any thing herein contained notwithstanding.

35. And whereas by the Act hereinbefore recited it is also provided that each of the places enumerated in the Schedules thereto annexed respectively marked (C.), (D.), and (E.), and that every city and borough in England, which before the passing of the said recited Act was entitled to return a member or members to serve in parliament, (except the several boroughs enumerated in the Schedule thereto annexed marked (A.), and except the several boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford,) and that the borough of Brecon, and each of the towns of Swansea, Loughor, Neath, Aberavon, and Kenfig, should, for the purposes of the said recited Act, include the place or places respectively which should be comprehended within such boundaries as should be settled and described by an Act to be passed for that purpose in this present parliament, which Act when passed should be deemed and taken to be part of the said recited Act as fully and effectually as if incorporated

therewith: And whereas the Act so to be passed for settling and describing the boundaries of cities, boroughs, and places as in the said recited Act is mentioned in this present Act: And whereas the several cities, boroughs, and places whereof the boundaries were so to be settled and described as in the said recited Act is mentioned are the several cities, boroughs, and places which are specified in the Schedule to this Act annexed marked (O.); be it therefore further enacted and declared, that the several cities, boroughs, and places specified in the said Schedule to this Act annexed marked (O.) shall, as to the election of members or a member to serve in parliament, respectively include the places and be comprised within the boundaries which in such Schedule are respectively specified and described in conjunction with the names of such cities, boroughs, and places respectively.

36. And be it enacted, that, subject to any direction to the contrary, the following rules shall be observed in the construction of the several descriptions of boundaries contained in the said Schedule hereto annexed marked (O.); (that is to say,)

1.—That the words “Northward,” “Southward,” “Eastward,” “Westward,” shall respectively be understood to denote only the general direction in which any boundary proceeds from the point last described, and not that such boundary shall continue to proceed throughout in the same direction to the point next described:

2.—That when any road is mentioned merely by the name of the place to which such road leads, the principal road thither from the city, borough, or place of which the boundary is in course of description shall be understood:

3.—That whenever a line is said to be drawn from, to, or through an object, such line shall, in the absence of any direction to the contrary, be understood to be drawn from, to, or through the centre of such object, as nearly as the centre thereof can be ascertained:

4.—That every building through which or through any part whereof any boundary hereby established shall pass shall be considered as within such boundary: Provided always, that if the boundaries of any two or more of the cities, boroughs, and places whereof the contents and boundaries are hereby settled and described shall pass through the same building or any part thereof, such building shall be considered as within that one of such two or more of the said cities, boroughs, and places which was before the passing of the hereinbefore recited Act entitled to return members or a member to serve in parliament, or if neither or more than one of such two or more of the said cities, boroughs, and places shall have been so entitled, then within that one of them whereof the area as hereby established is the smallest:

5.—That whenever any boundary by this Act established is said to pass along any other boundary, or along any road, lane, path, river, stream, canal, drain, brook, or ditch, the middle (as nearly as the same can be ascertained) of such other boundary, or of such road, lane, path, river, stream, canal, drain, brook or ditch, shall be understood:

6.—That the middle of any road or lane shall be understood as the middle of the carriageway along the same:

7.—That when any boundary by this Act established is said to proceed along a road, lane, path, river, stream, canal, or drain, from or to an object, such boundary shall be understood to proceed from or to that point in the middle of such road, lane, path, river,

Rules for the construction of the descriptions contained in Schedule (O.) to this Act.

stream, canal, or drain from which the shortest line would be drawn to the centre of such object, as nearly as the centre thereof can be ascertained :

- 8.—That the point at which any fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch is said to cut, meet, join, cross, reach, or leave any fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch, shall be understood as that point at which a line passing along the middle of the fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch so cut, met, joined, crossed, reached, or left, would be intersected by a line drawn along the middle of the fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch, so cutting, meeting, joining, crossing, reaching, or leaving, if such line were prolonged sufficiently far :
- 9.—That when a line is said to be drawn to a road, lane, river, stream, or canal, such line shall be considered as prolonged to the middle of such road, lane, river, stream, or canal :
- 10.—That by the words "sea " and "sea coast " shall be understood the low-water mark :
- 11.—That if any deficiency shall be found to exist in the line of any boundary described in the said Schedule to this Act annexed marked (O.), by reason of the intervention of any space between any two immediately consecutive points, such deficiency shall be supplied by a straight line to be drawn from the one to the other of such two immediately consecutive points.

Provision as to detached parts of parishes, &c. and for extra-parochial places.

37. And be it further enacted, that, notwithstanding the generality of any description contained in the said Schedule to this act annexed marked (O.), no city, borough, or place, the contents whereof are specified in such Schedule, shall include any part of any parish, township, hamlet, chapelry, tithing, manor, or liberty which is detached from the main body of such parish, township, hamlet, chapelry, tithing, manor, or liberty, if, by reason of including such detached part, the boundary hereby established of such city, borough, or place would not be continuous, unless such detached part shall, before the passing of this Act, have formed part of such city, borough, or place for the purpose of the election of members to serve in parliament ; but that all places, parochial, or extra-parochial, which are surrounded by the contents of which any city, borough, or place is said in such Schedule marked (O.) to consist, but for which no provision is made in such Schedule (O.), shall be considered as included within such city, borough, or place, for the purpose of the election of members to serve in parliament.

Misnomer not to vitiate, and the descriptions in Schedule (O.) to be considered as existing on the 1st Oct. 1831. Act may be amended this session.

38. Provided always, and be it enacted, that no misnomer or inaccurate description contained in this Act, or in any of the Schedules hereto annexed, shall in anywise prevent or abridge the operation of this Act with respect to the subject of such description, provided the same shall be so designated as to be commonly understood ; and that for the purpose of identifying the descriptions contained in the said Schedule (O.) with the subjects of such descriptions respectively, such descriptions shall, if now inapplicable, be held to apply to such subjects as they existed on the first day of October one thousand eight hundred and thirty-one.

39. Provided always, and be it enacted, that this Act may be amended or altered by any act or acts to be passed during this present session of parliament.

*Schedules to which the foregoing Act refers.**Schedule (M.)*

Counties to which the isolated Parts belong.	Parishes, Townships, &c. of which, or of Parts of which, the isolated Parts consist.	Counties in which the isolated Parts are locally situate.	Counties and Divisions to which it is intended that the isolated Parts should be annexed.
England.			
Bedfordshire {	Part of Studham Parish, partly in Beachwood Park in the County of Hertford	Hertfordshire ..	Hertfordshire.
Bedfordshire ..	Part of Ickleford Parish	Hertfordshire ..	Hertfordshire.
Berkshire	Part of Great Barrington Parish	Gloucestershire {	Gloucestershire, Eastern Division.
Berkshire	Part of Inglesham Parish	Wiltshire	Wiltshire, Northern Division.
Berkshire	Part of Langford Parish	Oxfordshire	Oxfordshire.
Berkshire	Little Farringdon Tithing	Oxfordshire	Oxfordshire.
Berkshire	Part of Shilton Parish	Oxfordshire	Oxfordshire.
Buckinghamsh {	Studley Parish or Hamlet in the Parish of Beckley	Oxfordshire	Oxfordshire.
Buckinghamsh.	Caversfield Parish	Oxfordshire	Oxfordshire.
Buckinghamsh {	Part of Luffield Abbey, an Extra-parochial Place	Northamptonshire {	Northamptonshire, Southern Division.
Cheshire	Part of Disley Township, situate on the Derbyshire Side of the River Goyt	Derbyshire ..	Cheshire, Northern Division.
Cornwall	A small Part of the Parish of St. Stephen by Saltash, on the Eastern Side of the River Tamar	Either in Devonshire or Cornwall ..	Devonshire, Southern Division.
Cornwall	Part of North Tamerton Parish, East of the Tamar	Either in Devonshire or Cornwall ..	Cornwall, Eastern Division.
Derbyshire ..	A Portion of Derbyshire, consisting of the Parishes and Places following; i. e. Measham	Leicestershire {	Derbyshire, Southern Division.
	Stretton in the Fields		
	Willlesley		
	Part of Appleby		
	Oakthorpe		
	Chilcote		
	Part of Donisthorpe		
Derbyshire	Part of the Parish of Ravenstone ..	Leicestershire {	Derbyshire, Southern Division.
Derbyshire	Part of the Township of Packington ..	Leicestershire {	Derbyshire, Southern Division.
Derbyshire	Part of Scropton Township	Staffordshire ..	Staffordshire, Northern Division.
Derbyshire {	Part of Beard Township, on the Cheshire Side of the River Goyt	Derbyshire or Cheshire ..	Derbyshire, Northern Division.
Devonshire	Thorncombe Parish	Dorsetshire	Dorsetshire.
Devonshire {	Part of Axminster Parish, namely, Burhall Downs and Easthay ..	Dorsetshire	Dorsetshire.

Schedule (M.)—continued.

Counties to which the isolated Parts belong.	Parishes, Townships, &c. of which, or of Parts of which, the isolated Parts consist.	Counties in which the isolated Parts are locally situate.	Counties and Divisions to which it is intended that the isolated Parts should be annexed.
Devonshire	Part of the Parish of Saint John ..	Cornwall	Cornwall, Eastern Division.
Devonshire	North Petherwin Parish	Cornwall	Devonshire, Northern Division.
Devonshire .. {	Part of Wirrington Parish, West of the Tamar	Cornwall or Devonshire ..	Devonshire, Northern Division.
Devonshire .. {	Part of the Hamlet of Northcote West of the Tamar	Cornwall or Devonshire ..	Devonshire, Northern Division.
Devonshire .. {	Part of Bridgerule Parish, West of the Tamar	Cornwall or Devonshire ..	Devonshire, Northern Division.
Devonshire .. {	Part of Maker Parish in the Tithing of Vaultersholme	Cornwall	Cornwall, Eastern Division.
Dorsetshire	Stockland Parish	Devonshire ..	Devonshire, Southern Division.
Dorsetshire	Dallwood Township	Devonshire ..	Devonshire, Southern Division.
Durham	The District of Norhamshire	Northumberland	Northumberland, Northern Division.
Durham {	The District of Islandshire, including the Farne Islands and Monkhouse	Northumberland	Northumberland, Northern Division.
Durham {	The Parish of Bedlington or Bedlingtonshire	Northumberland	Northumberland, Northern Division.
Durham {	The Parish of Craike or Craike-shire	North Riding of Yorkshire {	North Riding of Yorkshire.
Gloucestershire ..	Minety Parish	Wiltshire	Wiltshire, Northern Division.
Gloucestershire ..	Widford Parish	Oxfordshire ...	Oxfordshire.
Gloucestershire ..	Compton Parva Parish	Warwickshire ..	Warwickshire, Southern Division.
Gloucestershire ..	Sutton-under-Brails Parish	Warwickshire ..	Warwickshire, Southern Division.
Gloucestershire ..	Shennington Parish	Oxfordshire ...	Oxfordshire.
Gloucestershire ..	Part of Lea Parish	Herefordshire ..	Herefordshire.
Herefordshire ..	Farloe Chapelry	Shropshire .. {	Shropshire, Southern Division.
Herefordshire ..	Rochford Parish	Worcestershire {	Worcestershire, Western Division.
Herefordshire ..	Foothog Township	Between Monmouthsh. and Breconsh. ...	Herefordshire.
Herefordshire ..	Litton and Cascob Township	Radnorshire. ...	Radnorshire.
Herefordshire ..	Bwlch Hamlet	Monmouthshire ..	Monmouthshire.
Herefordshire ..	Part of the Parish of Trellick	Monmouthshire ..	Monmouthshire.
Hertfordshire ..	Part of Coleshill Hamlet	Buckinghamsh. ..	Buckinghamshire.
Hertfordshire ..	Part of Meppershall Parish	Bedfordshire ..	Bedfordshire.
Huntingdonshire ..	Part of Catworth Township	Northamptonshire {	Northamptonshire, Northern Division.
Huntingdonshire ..	Swineshead Parish	Bedfordshire ..	Huntingdonshire.
Huntingdonshire ..	Part of Everton Parish	Between Bedfordshire and Cambridgesh. {	Huntingdonshire.

Schedule (M.)—continued.

Counties to which the isolated Parts belong.	Parishes, Townships, &c. of which, or of Parts of which the isolated Parts consist.	Counties in which the isolated Parts are locally situate.	Counties and Divisions to which it is intended that the isolated Parts should be annexed.
Kent	{ Part of Woolwich Parish, North of the Thames	Kent or Essex {	Kent, Western Division.
Monmouthshire ..	Welsh Bicknor Parish	Herefordshire....	Herefordshire.
Oxfordshire	Boycot Township	Buckinghamshire	Buckinghamshire.
Oxfordshire	Jillingstone Lovell Parish	Buckinghamshire	Buckinghamshire.
Oxfordshire	Hackhampstead Chapelry	Buckinghamshire	Buckinghamshire.
Oxfordshire .. {	Great Lemhill Farm, Part of Broughton Poggs Parish	Gloucestershire	Gloucestershire, Eastern Division.
Shropshire	Part of Hales Owen Parish {	Bounded by Worcester-shire and Staffordsh. {	Worcestershire, Eastern Division.
Somersetshire {	Holwell Parish, including Buckshaw Tithing	Dorsetshire	Dorsetshire.
Hampshire .. {	North Ambersham and South Ambersham Tithings in the Parish of Steep	Sussex	Sussex, Western Division.
Staffordshire....	Broom Parish	Worcestershire {	Worcestershire, Eastern Division.
Staffordshire....	Clent Parish	Worcestershire {	Worcestershire, Eastern Division.
Sussex	{ Part of Rogate Tithing, being a Farm called Rogate Bohunt Farm	Hampshire .. {	Hampshire, Northern Division.
Warwickshire ..	Tutnal and Copley Hamlet	Worcestershire {	Worcestershire, Eastern Division.
Warwickshire {	Stretton upon Foss Parish	Between Parts of Worces- tershire and Gloucester- shire	Warwickshire, Southern Division.
Wiltshire	Ilmington Parish	Berkshire	Berkshire.
Wiltshire	Compton Scorpion Hamlet	Berkshire	Berkshire.
Wiltshire	Whitchurch Parish	Berkshire	Berkshire.
Wiltshire	Ditchford Hamlet	Berkshire	Berkshire.
Wiltshire	Part of Workingham Parish	Gloucester- shire	Gloucestershire, Western Division.
Wiltshire	Hinton Tithing in Hurst Parish ..	Gloucester- shire	Gloucestershire, Eastern Division.
Wiltshire	Didnam Tithing in Shinfield Parish		
Wiltshire	Swallowfield Parish		
Wiltshire	Kingswood Parish		
Wiltshire	Poulton Parish		
Worcestershire {	Aldminster Parish	Between Glou- cestershire and War- wickshire .. {	Worcestershire, Eastern Division.
	Tredington Parish, including the following Hamlets:—Arinscot, Blackwell, Newbold and Tolton, Darlingscote and Longdon, Shipston on Stour Parish, Tidmington Chapelry, Evenload Parish		
	Blockley Parish, including the following Hamlets:—Northwich, Paxford, Draycott, Dorne, Ditchford, Aston Magna		
	Cutsdean or Cuddesden Chapelry }		

Schedule (M.)—continued.

Counties to which the isolated Parts belong.	Parishes, Townships, &c. of which, or of Parts of which, the isolated Parts consist.	Counties in which the isolated Parts are locally situate.	Counties and Divisions to which it is intended that the isolated Parts should be annexed.
Worcestershire..	Iccomb Parish	Between Gloucestershire and Oxfordshire	Gloucestershire, Eastern Division.
Worcestershire..	Dailsford Parish		Oxfordshire ..
Worcestershire..	Oldborough Parish	Warwickshire	Worcestershire, Eastern Division.
Worcestershire..	Dudley Parish	Staffordshire..	Worcestershire, Eastern Division.
Worcestershire..	Edvin Loach Parish	Herefordshire	Worcestershire, Eastern Division.
Worcestershire..	Warley Wigorn Township	Between Parts of Staffordshire and Shropshire .	Worcestershire, Eastern Division.
Wales.			
Carnarvonshire	{ The Hundred of Creyddyn, Eirias Township or Hamlet	Denbighshire ...	Carnarvonshire.
Carnarvonshire ..		Denbighshire ...	Carnarvonshire.
Denbighshire ..	Carreghovah Township	{ Between Shropshire and Montgomeryshire	Montgomeryshire.
Flintshire	{ Part of the Hundred of Maylor, consisting of the following Parishes, Townships or Places, or of Parts thereof respectively; namely, Overton Foreign and Overton Villa, Knolton, Bangor, Erbistock, Worthenbury, Abenbury Vechan, Hanmer, Halghton, Willington, Iscoed, Bettisfield, Tybroughton, Penley, Broniugton		Bounded by the Counties of Salop, Chester and Denbigh
Flintshire	{ Sundry other small Plots of Land in the following Townships respectively; namely, Overton Villa, Overton Foreign, Bangor, Worthenbury, Sutton	Denbighshire ...	Flintshire.
Flintshire	{ Parts of Marford and Hoseley Townships	Denbighshire ...	Flintshire.
Flintshire	Part of Hawarden Township.....	Cheshire	Flintshire.
Glamorganshire	Flat Holmes	{ In the Bristol Channel ..	Glamorganshire.
Glamorganshire	Barry Island		{ In the Bristol Channel ...
Brecknockshire	Part of Glasbury Parish	Brecknockshire or Radnorshire ...	Brecknockshire.

Schedule (N.)

COUNTIES AND DIVISIONS.

*Polling Places.***England:**

Bedfordshire.—Bedford, Luton, Leighton, Ampthill, Biggleswade, Sharnbrook.

Berkshire.—Abingdon, Reading, Newbury, Wantage, Wokingham, Maidenhead, Great Faringdon, East Ilale.

Buckinghamshire.—Aylesbury, Buckingham, Newport Pagnel, Beaconsfield.

Cambridgeshire.—Cambridge, Newmarket, Royston.

Isle of Ely.—Ely, Wisbeach, Whittlesey.

Cheshire, Northern Division.—Knutsford, Stockport, Macclesfield, Runcorn.

Cheshire, Southern Division.—Chester, Nantwich, Northwich, Sandbach, Birkenhead.

Cornwall, Eastern Division.—Bodmin, Launceston, Liskeard, Stratton, St. Austell.

Cornwall, Western Division.—Truro, Penzance, Helston, Redruth.

Cumberland, Eastern Division.—Carlisle, Brampton, Wigton, Penrith, Aldstone.

Cumberland, Western Division.—Cockermouth, Aspatria, Keswick, Bootle, Egremont.

Derbyshire, Northern Division.—Bakewell, Chesterfield, Chapel-en-le-Frith, Alfreton, Glossop.

Derbyshire, Southern Division.—Derby, Ashbourne, Wirksworth, Melbourn, Belper.

Devonshire, Northern Division.—South Molton, Collumpton, Barnstaple, Torrington, Holsworthy, Crediton.

Devonshire, Southern Division.—Exeter, Honiton, Newton Abbot, Kingsbridge, Plymouth, Tavistock, Okehampton.

Dorsetshire.—Dorchester, Wimborne, Wareham, Beaminster, Sherborne, Shaftesbury, Blandford, Chesilton.

Durham, Northern Division.—Durham, Sunderland, Lanchester, Wickham, Chester-le-Street, South Shields.

Durham, Southern Division.—Darlington, Stockton, Bishops Auckland, Stanhope, Middleton Teesdale, Barnard Castle, Sedgefield.

Essex, Northern Division.—Braintree, Colchester, Saffron Walden, Thorpe.

Essex, Southern Division.—Chelmsford, Billericay, Romford, Epping, Rochford, Maldon.

Gloucestershire, Eastern Division.—Gloucester, Stroud, Tewkesbury, Cirencester, Campden, Northleach, Cheltenham.

Gloucestershire, Western Division.—Wotton-under-Edge, Newent, Newnham, Coleford, Sodbury, Thornbury, Dursley.

Hampshire, Northern Division.—Winchester, Alton, Andover, Basingstoke, Kingsclere, Odiham, Petersfield, Bishops Waltham.

Hampshire, Southern Division.—Southampton, Fareham, Lymington, Portsmouth, Ringwood, Romsey.

Herefordshire.—Hereford, Leominster, Bromysar, Ledbury, Ross, Kington.

Hertfordshire.—Hertford, Stevenage, Buntingford, Bishops Stortford, Hoddeston, Hatfield, Hemel Hempstead.

Huntingdonshire.—Huntingdon, Stilton.

Kent, Eastern Division.—Canterbury, Sittingbourne, Ashford, New Romney, Ramsgate.

Kent, Western Division.—Maidstone, Bromley, Blackheath, Gravesend, Tonbridge, Cranbrooke.

Lancashire, Northern Division.—Lancaster, Hawkeshead, Ulverston, Poulton, Preston, Burnley.

Lancashire, Southern Division.—Newton, Wigan, Manchester, Liverpool, Ormskirk, Rochdale.

Leicestershire, Northern Division.—Loughborough, Melton Mowbray, Ashby-de-la-Zouch.

Schedule (N.)—continued.

COUNTIES AND DIVISIONS.

*Polling Places.***England:**

- Leicestershire, Southern Division.*—Leicester, Hinckley, Market Harborough.
Lincolnshire, Parts of Lindsey.—Lincoln, Gainsborough, Epworth, Barton, Brigg, Market Raisin, Great Grimsby, Louth, Spilsby, Horncastle.
Lincolnshire, Parts of Kesteven and Holland.—Sleaford, Boston, Holbeach, Bourn, Donington, Navenby, Spalding, Grantham.
Middlesex.—Brentford, Endfield, King's Cross or within Half a Mile thereof, Hammersmith, Bedfont, Edgware, Mile End, Uxbridge.
Monmouthshire.—Monmouth, Abergavenny, Usk, Newport, the Rock Inn, in the Parish of Bedwelty.
Norfolk, Eastern Division.—Norwich, Yarmouth, Reepham, North Walsham, Long Stratton.
Norfolk, Western Division.—Swaffham, Downham, Fakenham, Lynn Regis, Thetford, East Dereham.
Northamptonshire, Northern Division.—Kettering, Peterborough, Oundle, Wellingborough, Clipston.
Northamptonshire, Southern Division.—Northampton, Daventry, Towcester, Brackley.
Northumberland, Northern Division.—Alnwick, Berwick, Wooler, Elsdon, Morpeth.
Northumberland, Southern Division.—Hexham, Newcastle-upon-Tyne, Haltwhistle, Bellingham, Stamfordham.
Nottinghamshire, Northern Division.—Nottingham, Mansfield, East Retford.
Nottinghamshire, Southern Division.—Newark-upon-Trent, Bingham, Southwell.
Oxfordshire.—Oxford, Deddington, Witney, Nettlebed.
Rutlandshire.—Oakham.
Shropshire, Northern Division.—Shrewsbury, Oswestry, Whitchurch, Wellington.
Shropshire, Southern Division.—Church Stretton, Bridgnorth, Ludlow, Bishop's Castle, Wenlock.
Somersetshire, Eastern Division.—Wells, Bath, Shepton Mallet, Bedminster, Axbridge, Wincanton.
Somersetshire, Western Division.—Taunton, Bridgwater, Ilchester, Williton.
Staffordshire, Northern Division.—Stafford, Leek, Newcastle-under-Lyne, Cheadle, Abbots Bromley.
Staffordshire, Southern Division.—Walsall, Lichfield, Wolverhampton, Penkridge, Kings Swinford.
Suffolk, Eastern Division.—Ipswich, Needham, Woodbridge, Framlingham, Saxmundham, Halesworth, Beccles.
Suffolk, Western Division.—Bury St. Edmund's, Wickham Brook, Lavenham, Stowmarket, Botesdale, Mildenhall, Hadleigh.
Surrey, Eastern Division.—Croydon, Reigate, Camberwell, Kingston.
Surrey, Western Division.—Guildford, Dorking, Chertsey.
Sussex, Eastern Division.—Lewes, East Grinstead, Battle, Mayfield.
Sussex, Western Division.—Chichester, Steyning, Petworth, Horsham, Arundel.
Warwickshire, Northern Division.—Coleshill, Nuneaton, Coventry, Birmingham, Dunchurch.
Warwickshire, Southern Division.—Warwick, Kineton, Stratford, Henley, Southam.
Westmoreland.—Appleby, Kirkby Stephen, Shap, Ambleside, Kendal, Kirkby-Lonsdale.
Isle of Wight.—Newport, West Cowes.
Wiltshire, Northern Division.—Devizes, Melksham, Malmesbury, Swindon.
Wiltshire, Southern Division.—Salisbury, Warminster, East Everley, Hindon.
Worcestershire, Eastern Division.—Droitwich, Pershore, Shipston, Stourbridge.
Worcestershire, Western Division.—Worcester, Upton, Stourport, Tenbury.

Schedule (N).—continued.

COUNTIES AND DIVISIONS.

*Polling Places (d).***England:**

Yorkshire, North Riding.—York, Malton, Scarborough, Whitby, Stokesley, Guisborough, Romaldkirk, Richmond, Askrigg, Thirsk, Northallerton, Kirby Moor Side.

Yorkshire, East Riding.—Beverley, Hull, Driffield, Pocklington, Bridlington, Howden, Hedon, Settrington.

Yorkshire, West Riding.—Wakefield, Sheffield, Doncaster, Snaith, Huddersfield, Halifax, Bradford, Barnsley, Leeds, Keighley, Settle, Knaresborough, Skipton, Pateley Bridge, Dent.

Wales:

Anglesea.—Beaumaris, Holyhead, Llangefni.

Bracknockshire.—Brecon.

Caermarthenshire.—Llandilo Vawr, Caermarthen, Llandovery, Newcastle Emlyn, Saint Clears, Llanelly, Llansawel.

Cardiganshire.—Cardigan, Aberystwith, Lampeter, Tregaron.

Carnarvonshire.—Carnarvon, Conway, Capel Cerig, Pwllheli.

Denbighshire.—Denbigh, Wrexham, Llanrwst, Llangollen, Ruthin.

Flintshire.—Flint, Rhuddlan, Overton.

Glamorganshire.—Bridgend, Cardiff, Swansea, Neath, Merthyr Tydvil.

Merionethshire.—Harlech, Bala, Dolgelly, Towyn, Corwen.

Montgomeryshire.—Montgomery, Llanidloes, Machynlleth, Llanfyllin, Llanvair.

Pembrokeshire.—Haverfordwest, Pembroke, Narberth, Fishguard, Newport, Tenby, Mathry.

Radnorshire.—New Radnor, Presteign, Rhaydr, Painscastle, Colwyn, Knighton, Pen-y-bont.

Schedule (N. 2.)

BOROUGHES.

Polling Places (d).

New Shoreham.—New Shoreham, Cowfold.

Cricklade.—Cricklade, Brinkworth, Swindon.

Aylesbury.—Aylesbury.

East Retford.—East Retford, Ollerton, Worksop, Gringley-on-the-Hill.

DUTIES BEFORE ELECTION.

This done, his next consideration will be what preparations are to be made for the election.

Duties after writ and before election.

The 7 & 8 Will. 3, c. 85, provided that County Courts held for the county of York, or other County Courts, used to be held on a *Monday* should be called on *Wednesdays*. But it may be holden by *adjournment* on Monday (*b*).

Time of holding Court.

The *polling places* are named by the statute of 2 & 3 Will. 4, c. 64 (*c*); but by a more recent statute (*d*) additional polling places.

(*b*) *Ante*, p. 69; Rogers on Elec. p. 7.

(*c*) *Ante*, p. 176.

(*d*) 6 & 7 Will. 4, c. 102.

<i>Duties before Election.</i>	places may be appointed by her majesty, by and with the advice of her privy council, on petition from justices in quarter sessions assembled. At each polling place (<i>in a county election</i>) as many polling booths must be provided as will allow one for every 450 electors; likewise there must be affixed upon the most conspicuous part of each of the said booths the names of the several parishes, townships, and places for which such booth is respectively allotted (<i>e</i>). Likewise for the use of each booth he must, before the day fixed for the election, cause to be made a true copy of the register of voters, and <i>shall under his hand certify</i> every such copy to be true (<i>f</i>).
Polling booths.	
Register of voters.	
Booths, at whose expense erected,	<i>The polling booths are to be erected at the joint and equal expense of the several candidates</i> , and by contract with them if they shall think fit to make such contract; if not, <i>then</i> to be erected by the Sheriff at their expense, subject to such limitation as hereinafter mentioned. As the Sheriff's power to erect booths is not absolute but conditional only, inasmuch as it arises only on the default of the candidates themselves <i>not contracting</i> , a formal request should in prudence be made upon them to do so, for in suing any candidate for his proportion it must be averred and proved (if traversed) that the candidates did not contract.
in default of candidates contracting.	
Requesting candidates.	
Expense when a person is proposed without his consent.	If any person be proposed without his consent, the proposer, <i>quoad</i> the expense, is liable as if he had been a candidate (<i>g</i>).
Expense of booths.	The expense of the booth or booths to be erected at the principal place of election, or at any of the polling places, must not exceed 40 <i>l.</i> in respect of such principal place of election or any one such polling place.
Sheriff may hire houses instead of booths.	Thus much as to booths, &c. but it must be observed that the Sheriff may, if he think fit, instead of erecting booths, procure or hire and use any houses or other building for the purpose of taking the poll therein, subject always to the same regulations, provisions, liabilities, and limitations of expense as booths are subject to.
As to gas, saw-dust, at whose expense.	For money paid for gas, saw-dust, &c. no provision seems to be made, and it is extremely difficult to determine whether the law will <i>imply</i> an obligation in favour of the Sheriff as to them; the better opinion seems to be in the negative, and that they

(*e*) 2 Will. 4, c. 45, s. 64. In case a "*parish*" or "*township*" be omitted where the poll is to be taken, see sect. 64.

(*f*) 2 Will. 4, c. 45, s. 72.
(*g*) Sect. 71.

must be supplied at the request of the candidate, otherwise they will not be liable for expenses of such a kind.

*Duties
before
Election.*

By sect. 65, "the Sheriff shall have power to appoint deputies to preside, and clerks (*h*) to take the poll at the principal place of election, and also at the several places appointed for taking the poll for any county, or any riding, parts or division of a county." The former to be paid each two guineas by the day, the latter one guinea.

*Deputies
and poll
clerks.*

The Sheriff, as returning officer, is to administer to the poll clerks the following oath before beginning to take such poll:—

I, *A. B.*, do swear, that I will, at this election of a member [or "members"] to serve in parliament for [the eastern division of] the county of *C.*, truly and indifferently take the poll and set down the name of each voter and his addition, profession or trade, and the place of his abode, and for whom he shall poll; and to poll no voter who is not sworn or put to his affirmation if legally required.

*Poll clerk's
oath.*

It is a breach of duty in the Sheriff as returning officer to refuse to administer this oath, but the statute is only directory and the omission will not avoid the election (*i*).

The Sheriff, as returning officer, or his deputy, may also appoint a commissioner or commissioners to each polling place for the purpose of administering the oaths required to be taken by electors; but as deputies have the same power of administering the oaths or affirmations required by law as the High Sheriff (*k*), the appointment will seldom be made in practice, and therefore it is unnecessary to do more than refer to the different statutes relating thereto (*l*).

*Commissioners for
administering oaths.*

Also the High Sheriff, or in his absence the Under-Sheriff, is authorized to appoint for each candidate such one person as shall be nominated to him by each candidate to be inspectors of every clerk who shall be appointed for taking the poll (*m*).

*Inspectors
of poll
clerks.*

(*h*) The appointment may be by parol. The circumstance of the poll clerks being reduced in number, no partiality in the Sheriff as returning officer nor prejudice to the candidates being shown, will not impeach the return; 1 Peckw. 269; *Rex v. Mayor of London*, 9 Barn. & Cr. 1.

(*i*) Colchester, 1 Peck. 506; Rogers on Elect. 17.

(*k*) 2 Will. 4, c. 45, s. 73.

(*l*) 34 Geo. 3, c. 73; 42 Geo. 3, c. 62.

(*m*) 7 & 8 Will. 3, c. 25, s. 3.

*Duties
before
Election.*
Cheque
books.

And if booths be erected, and poll clerks appointed, the Sheriff is to allow a *cheque book* for every poll book for each candidate, to be kept by their respective inspectors at every place where the poll for the election shall be carried on (n).

CITIES AND TOWNS.

(Being Counties of themselves.)

Duties after
receipt of
writ.

The Sheriff, in such places where he is returning officer, after indorsing the day of such receipt, and giving a memorandum of having so received it to the post master who delivered it to him, must cause public notice to be given of the time and place of election, which must be holden "within the space of eight days next after that of his receipt of the said writ, and give three days notice thereof at least, exclusive of the day of the receipt of the writ and of the day of the election."

Notice of
time and
place.

The notice must be given within the hours prescribed with regard to county elections (o).

Except in the case of Coventry (p) in cities and towns being counties of themselves there is no legislative provision as to the place where the election is to be holden.

Repeal of
the Reform
Act as to
the time for
keeping
open the
poll.

By the Reform Act the poll remained open *two* days, but now *one* (q) day only is allowed; also by the former statute six hundred might poll at each compartment, whereas by the latter statute "the polling booth, or compartment, at each polling place shall be so divided and arranged by the Sheriff, or other returning officer, that not more than *three hundred* electors shall be allotted to poll in each such booth or compartment,"—and "that on the requisition of any candidate, or of any elector being the proposer or seconder of any candidate, the booths or compartments of each polling place shall be so divided and arranged by the Sheriff, or other returning officer, that not more than *one hundred* electors shall be allowed to poll in each such booth or compartment—all expense incident to such an arrangement to be paid by the person making the requisition. If such a requisi-

Numbers to
be polled at
each booth.

Subdivided
again if re-
quired.

(n) 18 Geo. 2, c. 18, s. 9; 34 Geo. 3, c. 73, s. 4.
(o) *Ante*, p. 159.

(p) 21 Geo. 3, c. 54, s. 14.
(q) 2 & 3 Will. 4, c. 45; 5 & 6 Will. 4, c. 36.

tion be made the Sheriff must *forthwith* give public notice of the situation of such booths.

What has been said with regard to the Sheriff's power to erect booths in county elections applies with equal force here, except as to the *amount* of expenditure; the expense to be incurred for any booth or booths to be erected for any parish, district, or part of any city or borough, shall not exceed the sum of 25*l.* in respect of any one such parish, district, or part (r).

*Duties
before
Election.*

Sheriff's power in erecting booths, &c. Amount to be expended on booths, &c.

In all other respects, as regards deputies, poll clerks, inspectors, commissioners to administer oaths, register of voters, cheque books, &c. the proceedings previous to an election in cities and towns being counties of themselves are the same as for counties.

Deputies, poll clerks the same as in county elections.

CITIES, BOROUGHES, TOWNS.

When the Sheriff of the county has received the writ, indorsed it, and given a receipt for it as in other cases (s), he must *forthwith* make out his precept, and within three days after the receipt of the writ cause it to be delivered to the proper returning officer without fee, reward, or gratuity whatsoever (t).

Sheriff's Precept to the Returning Officer.

Middlesex. Sir G. C., Knt. and Sir M. M., Knt. Sheriff of the said county, to the bailiff of the liberty of the Dean and Chapter of the Collegiate Church of St. Peter at Westminster, in the said county, greeting: Know that I have received a certain writ of our Lady the Queen to me directed, the tenor whereof followeth [*the writ verbatim*,] and because the execution of the said writ belongs to you, therefore by virtue of the said writ I require you that you *forthwith* cause a citizen to be elected for the said city in the place of the said Sir F. B., Bart. according to the command of the said writ; when this my warrant shall be executed you shall make known to me immediately after the said election made, so that I may certify the same together with the said writ, and this precept return to our Lady the Queen in her Chancery *forthwith*. Hereof fail not. This is your war-

(r) 2 Will. 4, c. 45, s. 71, *ante*, p. 178.

(t) 7 & 8 Will. 3, c. 25, ss. 1, 2; 53 Geo. 3, c. 89; 23 Hen. 6, c. 14.

(s) *Ante*, p. 180.

*Duties
before
Election.*

rant, given under the seal of my office. Dated this day of
A. D. .

G. C. } High
M. M. } Sheriff.

Precept an
essential
process.

This precept, since the statute of 23 Hen. 6, c. 14, is an *essential* process, and any election had or votes given without a lawful precept, or before the precept be read and published, are void and of no force (u).

Ought to be
directed to
returning
officer.

Mistake
therein not
material.

The precept ought to be directed to the returning officer, although the statutes do not require it to be done, but its validity is not affected by any mistake in its direction—for the misdirection may be obliterated after the return made thereto to the Sheriff, and when produced from the Crown Office no parol evidence can be received to impeach it on that account (x).

Second pre-
cept in case
of a mistake.

In case of mistake a second precept may be sent to the returning officer (y).

Sheriff
punishable
for not send-
ing precept.

If the Sheriffs cause no precept to be delivered, or deliver one to any person but the proper officer, he is liable to be punished by the House (z).

AT THE ELECTION.

COUNTIES.

Writ, read-
ing of, &c.

Bribery
oath, by
whom ad-
ministered.

On the day fixed for the election, between the hours of *eight and eleven in the forenoon* (a), the Sheriff opens the proceedings by proclaiming silence and reading the writ of summons. Immediately after reading the writ, he must *take and subscribe* the bribery oath (b), to be administered to him by any justice or justices of the peace of the county where such election shall be made, or in his or their absence by any three electors.

Bribery Oath.

I, A. B., do swear that I have not directly or indirectly received any sum or sums of money, office, place, or employment, gratuity or re-

(u) See an *historical* account of this precept, 1 Roe on Elect. p. 397, n.; Glanv. 12, 20; Coke, 4 Inst. 49; 8 Journ. 90.

(z) *Dizon v. Fisher*, 4 Burr. 2267, Lord Mansfield. See *Bletchingly*, 2 Heyw. 47, 126.

(y) *Minehead*, 2 Heyw. 65, 66.

(z) Heyw. 69. As we do not profess to write for others than *Sheriffs* we beg leave to refer all other *returning officers* to Rogers on Election Law, Roe on Elect. and Wordsworth.

(a) 23 Hen. 6, c. 14, s. 2.

(b) 2 Geo. 2, c. 24, s. 3.

ward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself or any other person, to my use or benefit, or advantage, for making any return at the present election of members to serve in parliament, and that I will return such person or persons as shall to the best of my judgment appear to have the majority of legal votes.

Duties at Election.

He must next read, or cause to be read openly, before the electors there assembled, the *Bribery Act* (c), and every clause therein contained, under the penalty of 50*l*.

Bribery Act.

An Act for the more effectual preventing Bribery and Corruption in the Election of Members to serve in Parliament.

‘WHEREAS it is found by experience that the laws already in being have not been sufficient to prevent corrupt and illegal practices in the election of members to serve in parliament:’ for remedy, therefore, of so great an evil, and to the end that all elections of members to parliament may hereafter be freely and indifferently made, without charge or expense, be it enacted, that from and after the twenty-fourth day of June, 1729, upon every election of any member or members to serve for the commons in parliament, every freeholder, citizen, freeman, burgess, or person having or claiming to have a right to vote or be polled at such election, shall, before he is admitted to poll at the same election, take the following oath, (or being one of the people called *Quakers*, shall make the solemn affirmation appointed for *Quakers*,) in case the same shall be demanded by either of the candidates, or any two of the electors; that is to say,

Electors of parliament men to take the following oath, if demanded.

I, A. B. do swear [or, being one of the people called *Quakers*, *I, A. B., do solemnly affirm,*] *I have not received or had, by myself or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place or employment, gift, or reward, or any promise or security for any money, office, employment, or gift, in order to give my vote at this election, and that I have not been before polled at this election.*

Elector's oath.

Which oath or affirmation the officer or officers presiding or taking the poll at such election is and are hereby empowered and required to administer *gratis*, if demanded as aforesaid, upon pain to forfeit the sum of fifty pounds of lawful money of Great Britain, to any person that shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, wherein no essoign, protection, wager of law, or more than one imparlance shall be admitted or allowed; and if the said offence shall be committed in that part of Great Britain called Scotland, then to be recovered, together with full costs of suit, by summary action or complaint before the court of session, or by prosecution before the court of judicature there, for every neglect or refusal so to do; and no person shall be admitted to poll till he has taken and repeated the said oath in a public manner, in case the same shall be demanded as aforesaid,

Presiding officers to administer it, on forfeiture of 50*l*.

Duties at Election.

Sheriff or other returning officer admitting any to be polled before sworn, to forfeit 100*l*. Voters to incur the like penalty. Returning officers, after reading the writ, to take the following oath.

What votes shall be deemed legal.

before the returning officer, or such others as shall be legally deputed by him.

2. And be it further enacted, that if any sheriff, mayor, bailiff, or other returning officer shall admit any person to be polled without taking such oath or affirmation, if demanded as aforesaid, such returning officer shall forfeit the sum of one hundred pounds, to be recovered in manner aforesaid, together with full costs of suit; and that if any person shall vote or poll at such election, without having *first* taken the oath, or if a *Quaker*, having made his affirmation as aforesaid, if demanded, such person shall incur the same penalty which the officer is subject to for the offence above mentioned.

3. And be it further enacted, by the authority aforesaid, that every sheriff, mayor, bailiff, headborough, or other person being the returning officer of any member to serve in parliament, shall immediately after the reading the writ, or precept for the election of such member, take and subscribe the following oath; viz.

I, A. B., do solemnly swear, that I have not, directly nor indirectly, received any sum or sums of money, office, place or employment, gratuity or reward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use, or benefit or advantage, for making any return at the present election of members to serve in parliament; and I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes.

Which oath any justice or justices of the peace of the said county, city, corporation, or borough, where such election shall be made, or in his or their absence any three of the electors, are hereby required and authorized to administer: and such oath so taken, shall be entered among the records of the sessions of such county, city, corporation, and borough, as aforesaid.

4. And be it enacted by the authority aforesaid, that such votes shall be deemed to be legal which have been so declared by the last determination of the House of Commons; which last determination concerning any county, shire, city, borough, cinque port, or place, shall be final, to all intents and purposes whatsoever, any usage to the contrary notwithstanding.

5. And be it further enacted, by the authority aforesaid, that if any returning officer, elector, or person taking the oath or affirmation hereinbefore mentioned, shall be guilty of wilful and corrupt perjury, or of false affirming, and be thereof convicted by due course of law, he shall incur and suffer the pains and penalties which by law are enacted or inflicted in cases of wilful and corrupt perjury.

6. And be it further enacted, by the authority aforesaid, that no person convicted of wilful and corrupt perjury or subornation of perjury shall, after such conviction, be capable of voting in any election of any member or members to serve in parliament.

7. And be it further enacted, by the authority aforesaid, that if any person, who hath or claimeth to have, or hereafter shall have or claim to have, any right to vote in any such election, shall from and after the said twenty-fourth day of June, which shall be in the year of our Lord 1729, ask, receive, or take any money or other reward, by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or to refuse or forbear to give his vote in any such election, or if any person by himself, or any person employed by him, doth or shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes, or to forbear to

give his or their vote or votes in any such election, such person so offending in any of the cases aforesaid shall for every such offence forfeit the sum of five hundred pounds of lawful money of Great Britain, to be recovered as before directed, together with full costs of suit; and every person offending in any of the cases aforesaid, from and after judgment obtained against him in any such action of debt, bill, plaint, or information, or summary action or prosecution, or being any otherwise lawfully convicted thereof, shall for ever be disabled to vote in any election of any member or members to parliament, and also shall for ever be disabled to hold, exercise, or enjoy any office or franchise to which he and they then shall or at any time afterwards may be entitled, as a member of any city, borough, town corporate, or cinque port, as if such person was naturally dead.

8. And be it further enacted, by the authority aforesaid, that if any person offending against this Act shall, within the space of twelve months next after such election as aforesaid, discover any other person or persons offending against this Act, so that such person or persons so discovered be thereupon convicted, such person so discovering, and not having been before that time convicted of any offence against this Act, shall be indemnified and discharged from all penalties and disabilities which he shall then have incurred by any offence against this Act.

9. And for the more effectual observance of this Act, be it enacted, that all and every of the sheriffs, mayors, bailiffs, and other officers to whom the execution of any writ or precept for electing any member or members to serve in parliament, shall belong or appertain, shall and are hereby required at the time of such election, immediately after the reading such writ or precept, to read or cause to be read openly before the electors there assembled, this present Act, and every clause therein contained; and the same shall also openly be read once in every year at the general quarter sessions of the peace, to be holden next after Easter, for any county or city, and at every election of the chief magistrate in any borough, town corporate, or cinque port, and at the annual election of magistrates and town councillors for every borough within that part of Great Britain called Scotland.

10. And be it further enacted, by the authority aforesaid, that every sheriff, under-sheriff, mayor, bailiff, and other officer to whom the execution of any writ or precept for the electing of members to serve in parliament doth belong, for every wilful offence, contrary to this Act, shall forfeit the sum of fifty pounds, to be recovered, together with full costs of suit, in the manner before directed.

11. Provided always, and it is hereby declared and enacted by the authority aforesaid, that no person shall be made liable to any incapacity, disability, forfeiture, or penalty, by this Act laid or imposed, unless prosecution be commenced within two years after such incapacity, disability, forfeiture, or penalty shall be incurred, or in case of a prosecution, the same be carried on without delay; any thing herein contained to the contrary notwithstanding.

Duties at Election.

*Penalty of 500*l*.*

Disability.

Offenders, in twelve months after the election, discovering others, indemnified.

The Act to be read by the sheriff, &c. after reading the writ, and at the quarter sessions after Easter.

Sheriff, &c. offending.

Penalty.

Prosecutions to commence within two years. This section explained by 9 G. 2, c. 38.

He then calls upon the electors to name the candidates.

If no more candidates are nominated than are required by the writ to be returned, the Sheriff, as returning officer, has no authority to open a poll to allow time for the appearance of another candidate, but is bound forthwith to return those nominated; if

Nomination.

Duties at Election.

more are nominated than are required by the writ to be returned, the election is to be made by the view or by the poll.

Note, however, that a fresh candidate may be proposed *at any time during the poll*, and his election will be good (*d*).

An election by the view.

An election by the view is where it is made with the consent of the freeholders then present, and no poll is required for de-

Election by the poll.

termination thereof (*e*); an election by the poll is where the polls of the electors are numbered.

Sheriff must grant a poll if duly demanded.

It appears from the earliest cases that the Sheriff was not bound to grant a poll unless a real doubt arose as to the majority of the persons *then present*, but it being now established that the voters need not be present at the reading of the writ, it necessarily follows that the number or expression of those present at the reading of the writ is no rule, and that without regard thereto the Sheriff must grant a poll when *DULY* demanded, that is either by a candidate or elector (*f*); if he refuse to grant the poll when thus legally demanded, the election would be void and the Sheriff as returning officer severely punished (*g*).

When no votes are tendered within a reasonable time.

But if after such demand no votes are tendered within a reasonable time, he may return according to the view. In Westminster, 1661, the High Bailiff waited above half an hour after the appointment of poll clerks to take the poll which had been demanded, but no votes being tendered he returned the candidates with the majority on the view, and it was resolved that they were duly elected (*h*).

When poll be once granted must proceed.

When once the poll has been granted, the Sheriff must proceed with it, although the party who demanded it should waive it or disturb the proceedings, otherwise the election will be void (*i*).

Candidate's qualification.

After the nomination of the candidates,

(*d*) Bristol, 1 Dougl. 245; Montgomery, 15 Journ. 94; 1 Heyw. 376; 1 Peckw. 83, Penryn, 1827; *Nottingham case*, 1 Peckw. 81—85.

(*e*) 7 & 8 Will. 3, c. 25, s. 3.

(*f*) 1 Heyw. 360, 367.

(*g*) Glanv. 76, 81; 4 Inst. 48; 4

Com. Dig. 289; 1 Journ. 677, 729, 814, 890; 9 Journ. 110; see also 7 & 8 Will. 3, c. 25, s. 3; and 25 Geo. 3, c. 84, s. 1.

(*h*) 8 Journ. 280; 1 Heyw. 370.

(*i*) 1 Whitelock, 387; Glan. 133, 141; 4 Inst. 48.

"3. Every candidate at any election of a member or members to serve in parliament for any county, riding, part, or division of a county, city, borough or cinque port as aforesaid, shall, upon a reasonable request made to him at the time of such election, or at any time before the day named in the writ of summons for the meeting of parliament, by or on behalf of any candidate at such election, or by any two or more registered electors having a right to vote at such election, make and subscribe a declaration to the purport or effect following, such request to be in writing, and signed by the candidate or the said two or more electors; (that is to say,)

'I A. B. do solemnly and sincerely declare, that I am to the best of my knowledge and belief duly qualified to be elected as a member of the House of Commons, according to the true intent and meaning of the Act passed in the Second Year of the reign of Queen Victoria, intituled "An Act to amend the Laws relating to the Qualification of Members to serve in Parliament," and that my qualification to be so elected doth arise out of [here let the party state the nature of his qualification, as the case may be; if the same ariseth out of lands, tenements or hereditaments, let him state the barony or baronies, parish or parishes, township or townships, precinct or precincts, and also the county or counties, in which such lands, tenements or hereditaments are situate, and also the estate in the said lands, tenements or hereditaments, or in the rents or profits thereof, of or to which he is seised or entitled; or if the same ariseth out of personal estate or effects let him state of what nature and where situate such personal estate or effects are, and what interest he hath in such personal estate or effects, and upon what securities and in whose names the same are vested,] as hereunder set forth.'

And the election and return of any person who, upon such request as aforesaid, shall wilfully refuse or neglect to make and subscribe the said declaration within twenty-four hours after such request shall have been so made, shall be void.

"4. And be it enacted, that the said declaration shall be made before the returning officer at any election, or a commissioner for that purpose lawfully appointed, or any justice of the peace within the united kingdom of Great Britain and Ireland; and the said returning officer, commissioner or justice of the peace before whom the said declaration shall be made is hereby required to certify the making thereof, when the same shall have been made in England or Wales, unto the High Court of Chancery, or to the Court of Queen's Bench in England, and when the same shall have been made in Ireland unto the High Court of Chancery or to the Court of Queen's Bench in Ireland, within three months after the making of the same, under the penalty of forfeiting the sum of one hundred pounds; to wit, one moiety thereof to the Queen, and the other moiety thereof to such person or persons as will sue for the same, to be recovered, with full costs of suit, by action of debt or information, in any of her majesty's Courts of Record at Westminster or Dublin respectively.

"5. And be it enacted, that no fee or reward shall be taken for administering any such declaration, or making, receiving or filing the certificate thereof, except one shilling for administering the declaration, and two shillings for making the certificate, and two shillings for receiving and filing the same, to be paid by the person or persons requiring such declaration to be made, under the penalty of twenty pounds, to be recovered and divided as aforesaid" (k).

Duties at Election.

Candidates at elections to make the following declaration, if required.

Form of declaration.

Before whom declaration to be made. Declaration to be certified, under penalty.

Fees for administering and filing declaration.

Certificate of Declaration.

I do hereby humbly certify that C. D., one of the candidates for the

Duties at Election.

Eastern Division of the county of C., being first duly requested in that behalf, did, on the day of , A. D. 1839, swear before me (the returning officer therein, and duly empowered to administer to him the said oath,) that he, to the best of his knowledge and belief, was duly qualified to be elected as a member of the House of Commons according to the true intent and meaning of the Act passed in the second year of the reign of Queen Victoria, intituled "*An Act to amend the Laws relating to the Qualification of Members to serve in Parliament.*"

G. A., Returning Officer.

Not to extend to the members for the Universities ;

" 9. Provided always, and be it enacted, that nothing in this Act contained shall extend to either of the Universities in that part of Great Britain called England, or to the University of Trinity College, Dublin, in Ireland, or to any member or members elected and returned to serve in parliament by any of the said Universities, but that they and each of them may elect and return members to represent them in parliament, and that the members so elected and returned may sit and vote in the House of Commons, notwithstanding such members or any of them may not, at the time of their election and return, or afterwards, possess any such qualification as is herein required, or deliver in such paper, or make or subscribe such declaration as is herein required, any thing herein contained to the contrary notwithstanding: provided also, that nothing in this Act contained shall extend to make the eldest son or heir apparent of any peer or lord of parliament, or of any person qualified by this Act to serve as knight of the shire, incapable of being elected and returned, or of sitting and voting as a member of the House of Commons in any parliament."

nor to the eldest sons of peers,

If a demand of poll be made, the Court must be adjourned over to the next day but two after the day of nomination, unless such next day but two shall be Saturday or Sunday, then the adjournment must be to the following Monday (l).

At what hour election to commence.

Continuance.

Close.

On the day to which the Court has been adjourned, the poll is to commence at nine o'clock in the forenoon at the principal place of election, and also at the several places appointed for taking polls, and continue two successive days; (that is to say) for seven hours on the first day of polling, and for eight hours on the second day; and no poll shall be kept open later than four o'clock in the afternoon of the second day (m).

Sheriff's duties in case of interruption by riot, &c.

If the proceedings at the election be interrupted or obstructed by any riot or open violence, the Sheriff or his deputy cannot finally close the poll for such cause, but must adjourn the poll at the place only where the interruption or obstruction takes place until the following day, and if necessary (of which he as returning officer is judge) shall further adjourn the same until such interruption or obstruction shall have ceased, when he shall again proceed to take the poll at such place.

(l) 2 Will. 4, c. 45, s. 62.

(m) Sect. 62.

Note.—The day whereon the poll is so adjourned for the cause aforesaid is not, *as to such place where, &c.* to be reckoned one of the two days.

Duties at Election.

How the day on which the poll is adjourned is calculated. In case adjournment is made by deputy.

And whensoever the poll is adjourned in such a case by the Sheriff's deputy, he must *forthwith* give notice of the adjournment to the Sheriff, who shall not finally declare the state of the poll or make proclamation of the members chosen, until the poll so adjourned at such place shall have been formally closed and delivered or transmitted to the Sheriff.

In case of any disturbance by an individual, the Sheriff or his deputy should cause him to be taken before a magistrate to be bound over to keep the peace; the Sheriff cannot commit him as a magistrate (n).

What Sheriff should do with an individual who disturbs the proceedings.

At the time of polling, no inquiry is to be permitted as to the right of any person to vote except as follows, and that only by the Sheriff or his deputy, if required on behalf of any candidate, and at the time of his tendering his vote, and not afterwards. The following questions, or any of them and no other, are to be put to a voter, viz. (o).

What questions can be put to a voter.

"1. Are you the same person whose name appears as *A. B.* on the register of voters now in force for the county of _____, [or "for the riding, parts or division, &c." *as the case may be.*]

"2. Have you already voted, either here or elsewhere, at this election for the county of _____, [or "for the riding, parts or division of the county of _____," *as the case may be.*"]

"3. Have you the same qualification for which your name was originally inserted in the register of voters now in force for the county of _____, [or "for the riding, &c." *as the case may be, specifying in each case the particulars of the qualification as described in the register.*"]"

As to the sufficiency of the answer returned to any of the three questions, the Sheriff or his deputy acts in a *judicial* character, and it is therefore for him to exercise his discretion thereon, and reject or admit the vote accordingly (p). The wilfully making false answers to any of these questions is an indictable misdemeanor.

In addition to these three questions, the Sheriff or his de-

(n) *Spilsbury v. Mickelthwaite*, 1 Taunt. Rep. 146.

(o) See *ante*, p. 143.

(p) *Ante*, 153.

Duties at Election.

puty, or the Commissioners (if any), must, *if required on behalf of any candidate*, at the time of tendering a vote, administer the following oath or affirmation, as the case may be.

Oath of Identity.

"You do swear [*or, being a Quaker or Moravian, "do affirm,"*] that you are the same person whose name appears as *A. B.* on the register of voters now in force for the county of , [*or "for the riding, &c."*] and that you have not before voted, either here or elsewhere, at the present election for the said county, [*or "for the said riding, &c."*] So help me God."

No voter at any election is to be required to take any oath but the one above-mentioned, *either in proof of his freehold, residence, age, or other qualification or right to vote (q).*

At the poll, and immediately before the voter is admitted to poll, the officer presiding, if demanded by either of the candidates, or of any two of the electors, shall administer to him the following oath.

Bribery Oath (r).

I, *A. B.* do swear (*or, being one of the people called Quakers, I, A. B. do solemnly affirm,*) I have not received or had, by myself or any person whatsoever in trust for me, or for my use or benefit, directly or indirectly, any sum or sums of money, office, place, or emolument, gift or reward, or any promise, or security for any money, office, employment or gift in order to give my vote at this election, and that I have not been before polled at this election.

Oaths of allegiance, &c.

The oaths of allegiance and supremacy (*s*) must also be administered to a voter by the returning officer, if requested by any one of the candidates—also the oath of abjuration if requested by any candidate, or any person present (*t*).

Roman Catholics.

Her Majesty's subjects professing the Roman Catholic religion, instead of the oaths of allegiance, supremacy, and abjuration, must take and subscribe the oath prescribed by the statute

(q) Sect. 58.

(r) *Bribery oath* must be administered by the *returning officer* and not by a commissioner, 2 Geo. 2, c. 24, and 43 Geo. 3, c. 74; *ante*, p. 183.

(s) 7 & 8 Will. 3, c. 27, s. 19; 1 Geo. 1, st. 2, c. 13.

(t) 6 Ann, c. 23; 6 Geo. 3, c. 53;

as to *Quakers* see Wordsworth's *Elect. Law*, 113; also *ante*, p. 21; using the word "*declare*" instead of "*swear*;" "*renounce*" instead of "*abjure*;" "*wicked*" instead of "*damnable*;" omitting the words "*upon the true faith of a Christian.*"

of 10 Geo. 4, c. 7. For the forms of all which we beg leave to refer to a former folio instead of transcribing them again (u).

Duties at Election.

It will not unfrequently occur that an individual whose claim to be on the register has been rejected by the revising barrister will *tender* his vote now, (and it is of vital importance that he should *tender* it as well with the view of appealing against the revising barrister's decision as to his right, as of forming the ground work of a petition to the House of Commons against the return,) should a vote of such kind be *tendered* the returning officer, or his deputy, *must* enter the same upon the poll book, distinguishing the same from the votes admitted and allowed at such election (x).

Tender of a vote rejected by revising barrister.

At the close of each day's poll the poll clerks must enclose and seal their several books and publicly deliver them, so enclosed and sealed, to the Sheriff, Under-sheriff, or Sheriff's deputy, presiding at the poll, who is to give a receipt for the same; and who on the commencement of the poll on the second day must deliver them back so enclosed and sealed to the persons from whom he received them (y).

What are to be done with the books each night.

At the final close of the poll the poll clerks must deliver the books as before to the presiding officer, who *forthwith* must deliver or transmit them so enclosed and sealed to the Sheriff, or his Under-sheriff, who is to receive and keep all the poll books unopened until the re-assembling of the Court *on the next day but one after the close of the poll*, unless such next day but one be *Sunday* and then on the *Monday*; when he shall openly break the seals thereon—cast up the numbers of votes as they appear on the said several books—and openly declare the state of the poll, and then make *proclamation* of the member or members chosen; which proclamation must not be later than two o'clock in the afternoon of the same day.

At the final close of the poll.

Sheriff's duties in declaring the state of the poll.

Proclamation.

Any person is entitled to a copy of the poll on payment of a reasonable charge for writing it (z).

The return to the writ is by indentures between the Sheriff and electors, but more of this under its proper head.

(u) *Ante*, p. 22.

(z) 2 Will. 4, c. 45, s. 59.

(y) *Ibid.* s. 65.

(x) 7 & 8 Will. 3, c. 25, s. 6.

Duties at Election.

CITIES AND TOWNS.

(Being Counties of themselves.)

No times fixed by law for the commencement of the election. No particular time is fixed by statute law as to the commencement of the election, and the time therefore rests entirely with the Sheriff as returning officer.

Place. *As to the place of election* it is provided by sect. 68 of the Reform Act, "that no nomination shall be made or election holden of any member for any city or borough in any church, chapel, or other place of public worship."

Returning officer's duties at election. On the day appointed by him, after proclamation for silence, he must read his authority to hold the court (*the writ of summons or precept as the case may be,*) take and subscribe the *bribery oath*—read, or cause to be read openly, the *Bribery Act*, and proceed just in the same manner as before laid down for his guidance in county elections.

Duration of poll. By the Reform Act the poll might remain open *two* days, but by a more recent statute (a) it is limited to *one* day.

Hours of polling, &c. The polling is to commence according to the same statute at eight o'clock in the forenoon of the day next following the day fixed for the election, and to close at four o'clock. When the next day is a *Sunday, Good Friday, or Christmas-day* (b), then on the following day.

Questions to be put to a voter. The questions to be put to the voters at the time of polling are the same as at county elections, only substituting "*city or town*" for "*county*," as the case may require.

Oaths of allegiance, &c. The oath of allegiance, abjuration, and supremacy can no longer be tendered to a voter; nor any oath or oaths required to be taken by any act of parliament in lieu thereof, as for instance, the oath appointed for Roman Catholics under the statute of 10 Geo. 4, c. 7 (c).

Adjournment of nomination or of poll in case of riot. *In case of riot* at the nomination or at the taking of the poll, it is enacted, "that where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whe-

(a) 5 & 6 Will. 4, c. 36, s. 2.

(b) As to the arrangement of

booths, &c. and number of voters allowed to poll at each, see *ante*, p. 180.

(c) 5 & 6 Will. 4, c. 36, s. 6.

ther such proceedings shall consist of the nomination of candidates or of the taking the poll, the Sheriff or other returning officer, or the lawful deputy of any returning officer, shall not for such cause terminate the business of such nomination, nor finally close the poll, but shall adjourn the nomination or the taking the poll at the particular polling place or places at which such interruption or obstruction shall have happened until the following day, and, if necessary, shall further adjourn such nomination or poll, as the case may be, until such interruption or obstruction shall have ceased, when the returning officer or his deputy shall again proceed with the business of the nomination or with the taking the poll, as the case may be, at the place or places at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the poll shall be regulated accordingly; and any day whereon the poll shall have been so adjourned shall not as to such place or places be reckoned the day of polling at such election, within the meaning of this Act; and whenever the poll shall have been so adjourned by any deputy of any Sheriff or other returning officer, such deputy shall forthwith give notice of such adjournment to the Sheriff or returning officer, who shall not finally declare the state of the poll, or make proclamation of the member or members chosen until the poll so adjourned at such place or places as aforesaid shall have been finally closed, and the poll books delivered or transmitted to such Sheriff or other returning officer, any thing hereinbefore or in any other statute to the contrary notwithstanding: provided always, that this Act shall not be taken to authorize an adjournment to a *Sunday*; but that in every case in which the day to which the adjournment would otherwise be made shall happen to be a *Sunday, Good Friday, or Christmas Day*, that day or days shall be passed over, and the following shall be the day to which the adjournment shall be made."

*Duties at
Election.*

In all other respects the proceedings are the same as at county elections.

RETURN.

As to the ancient(d) mode of making the return we briefly Ancient
mode of

(d) 1 Peckw. 119, n.

Return.
making a
return.

refer to the following authorities, 1 Peckw. 53; 4 Dougl. 156; 1 Roe on Elect. 742; where much curious matter is to be found on the subject.

By inden-
ture, but not
by all the
electors and
the High
Sheriff.

At the present day the return is made by indenture under seal between the High Sheriff and the electors, in conformity to the statutes of 7 Hen. 4, c. 15, and the 8 Hen. 6, c. 7; the former statute required the indenture to be under the seals of *all* the electors, but by the latter statute and in conformity thereto it now is made between the High Sheriff of the one part and a few electors (*three or four*) by name, "*and many other persons of the county aforesaid and electors of knights to parliament for the said county of the other part.*"

Indenture.

THIS INDENTURE made in the full county of York, holden at the castle of York in and for the said county on Wednesday, the day of , in the second year of the reign of our sovereign lady Queen Victoria, by the grace of God of the united kingdom of Great Britain and Ireland Queen, defender of the faith, and so forth, and in the year of our Lord 1839; *Between A. B., Esq., High Sheriff of the said county of the one part, and C., D., E., F., and many other persons of the county aforesaid, and electors of knights to parliament for the said county, of the other part:* WITNESSETH that proclamation being made by the said Sheriff by virtue of and according to a writ of our sovereign lady the Queen, directed to the said Sheriff and hereunto annexed, for the election of two knights of the most fit and discreet of the said county, girt with swords, to serve in a certain parliament to be holden at the city of Westminster on the day of next ensuing; the said parties to these presents, together with the major part of the electors for the county aforesaid, present in the full county of York, at the castle of York aforesaid, on the day of the date hereof, by virtue of the said writs, and according to the force and effect of divers statutes in that case made and provided herein in the said full county of York, by unanimous assent and consent, freely and indifferently elected and chose two knights of the most fit and discreet of the said county, girt with swords, to wit, Sir G. M., Bart., and G. A. of , Esq., to be knights to the said parliament so to be holden at the day and place in that behalf hereinbefore mentioned for the commonalty of the county of York (e); giving and granting to the aforesaid knights full and sufficient power for themselves and the commonalty of the same county, to do and consent to those things which in the said parliament, by the common council of the kingdom of our said lady the Queen (by the blessing of God), shall happen to be ordained upon the affairs in the said writ specified. In witness whereof the parties to these presents have interchangeably put their hands and seals the day, year, and place first above written.

A. B. (L. s.)
C. (L. s.)
D. (L. s.)
E. F. (L. s.)

(e) If two knights or burgesses be elected at the same time as a gene-

ral election there is but one instrument.

Mr. Orme (*f*) states that this form is “*to be engrossed on the usual stamp for deeds.*” Mr. Roe, on the other hand, states that it requires *no* stamp; and as I am not able to discover upon what grounds the exemption from stamp duty is claimed for this instrument, I am inclined, with all due deference, to consider Mr. Orme’s the better opinion.

Return.
Stamp.

The return must be signed, but it is not necessary that it should be signed by any of the electors (*g*).

Must be signed.

There ought to be a counterpart of the indenture, for where the original was stolen the counterpart was holden sufficient (*h*).

Counterpart.

When the indenture is executed, it is by the statute of 7 Hen. 4, c. 15, to be tacked to the writ, and both (the execution of the writ being indorsed on the back of the instrument) remitted to the clerk of the crown in Chancery, into whose department the returns are made (*i*).

How transmitted to the clerk of the crown in Chancery.

The writs in the cases of the County Palatine of Lancaster and the Cinque Ports are, upon their return by the chancellor or warden, indorsed *mutatis mutandis* as follows:—

Return of writs in Lancashire and Cinque Ports, &c.

Return of Writ in Lancashire, &c.

The answer of the Right Honourable Charles Lord Holland, Chancellor of the County Palatine of Lancaster, to this writ.

By virtue of this writ to me directed and delivered, by another writ under the County Palatine of Lancaster within mentioned and directed to the Sheriff of the said county, I commanded the said Sheriff as within I am commanded, which said Sheriff, to wit, *G. A., Esq.*, in answer to the said writ saith, that the execution of the said writ appears in certain indentures hereunto annexed.

By the same Chancellor.

The return to the *precept* is by indentures between the returning officer and electors on the one hand, and the Sheriff on the other.

Return of Precept.

This indenture, made in the liberty of *W.*, in the county of *M.*, the day of _____, in the second year of the reign, &c. between Sir

(*f*) App. 6.

(*g*) 10 Journ. 359.

(*h*) Liskeard, 23 Journ. 535, 536.

(*i*) The law does not point out any particular person by whom any return is to be delivered into the crown office.

The officer, however, making it will be responsible for entrusting it in proper hands. Mr. Roe suggests the person elected to be the fittest person to be the bearer of his own return.

C. C., Knt., and Sir M. M., Knt., Sheriff of the county of M. aforesaid, of the one part, and J. C., Esq., Bailiff, of the liberty of the dean and chapter of the collegiate church of St. Peter's W., in the county aforesaid, of the other part; witnesseth, that by virtue of a certain precept directed from the said Sheriff to the bailiff and sewed to this indenture, proclamation of the premises in the said precept first mentioned, and of the day and place, as in the said precept is directed first being made, the citizens who were present at the said proclamation have freely and indifferently, according to the form of the statute in that case made and provided, and according to the tenor and effect of the aforesaid precept and of the writ in the said precept recited, chosen one citizen of the most discreet or sufficient of the city and liberty aforesaid, that is to say, the Honourable E. C., Esq., to which said E. C. so elected the aforesaid citizens have given and granted full and sufficient power from themselves and the commonalty of the city, town, borough, and liberty aforesaid, to do and consent to those things which at the said parliament, by the common council of the said kingdom, with God's assistance, shall happen to be ordained upon the affairs in the said precept specified, according to the form and effect of the said precept. In witness whereof, as well the said Sheriff as the aforesaid bailiffs of the city, town, borough, and liberty aforesaid, to these indentures their seals have interchangeably put the day and year first above mentioned.

C. C.
M. M.
J. C.

In some places, as at Westminster, it is *usual* for some of the electors to join; it is then to be indorsed by the High Sheriff, as in other *sub-returns*.

Sheriff's Return.

The answer of Sir G. C., Knt., and Sir M. M., Knt., Sheriff of the county of M., to this writ.

By virtue of this writ to me directed and delivered, and by the precept hereunto annexed under my hand and seal of office, and directed to the returning officer of the said borough, I commanded the said returning officer as within I am commanded, which said returning officer, to wit, G. A., Esq., in answer to the said writ, saith, that the execution of the said writ appears in certain indentures hereunto annexed.

By the same Sheriff.

By whom
return
made.

As the precept should be directed and delivered to the proper returning officer of the borough so he is the only person who can make a good return to the High Sheriff; and if not made by the proper returning officer the High Sheriff should not execute the indentures. *Note*, however, that the return of an officer *de facto* is sufficient, although he may not have complied with all the legal forms necessary to sustain his election to the office upon a *quo warranto* (k).

(k) 2 Heyw. 62, 63, and cases cited Dougl. Rep. 568.

Where an Under-sheriff executed *two* returns, one made by a person not named in the precept, the other by the proper officer, and returned them both, he was committed to the custody of the Serjeant-at-arms (1). Two returns must not be executed.

10 & 11 Will. 3, c. 7.

An Act for preventing irregular Proceedings of Sheriffs and other Officers, in making the Returns of Members chosen to serve in Parliament. Return, when made.

For preventing abuses in the returns of writs of summons for the calling and assembling of any parliament for the future, or writs for the choice of any new member to serve in parliament; and to the end such writs may, by the proper officer or his deputy, be duly returned and delivered to the clerk of the crown, to be by him filed, according to the ancient and legal course; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by authority of the same, that the Sheriff, or other officer having the execution and return of any such writ which shall be issued for the future, shall, on or before the day that any future parliament shall be called to meet, and with all convenient expedition, not exceeding fourteen days after any election made by virtue of any new writ, either in person, or by his deputy, make return of the same to the clerk of the crown in the High Court of Chancery, to be by him filed; and the Sheriff, or other person making such return, shall pay to the said clerk of the crown the ancient and lawful fees of four shillings, and no more, for every knight of a shire, and two shillings, and no more, for every citizen, burgess or baron of the cinque ports, returned into the said Court, to be by him filed; and the said Sheriff or officer shall, by virtue of this Act, charge the same to his Majesty, his heirs or successors, and have allowance thereof in his account in the Exchequer or elsewhere. Writ, when returnable.

2. And whereas by an Act made in the seventh and eighth years of the reign of his present Majesty, intituled, *An Act for the further regulating Elections of Members to serve in Parliament, and for the preventing irregular Proceedings of Sheriffs and other Officers in the electing and returning such Members*, it is provided and enacted, that the officer, on the receipt of any such writ, shall, within three days after such his receipt, by himself or proper agent, deliver, or cause to be delivered, a precept or precepts to the proper officer of every borough, town corporate, port or place within his jurisdiction, to whom the execution of such precept doth belong or appertain, which by experience hath been found too short a time for the performance of the same in the cinque ports; be it therefore enacted by the authority aforesaid, that from henceforth the proper officer of the cinque ports shall be allowed six days from the receipt of such writ for the delivery of the precept, according to the purport of the said Act; any thing in the said Act, or any other law, statute or usage to the contrary in anywise notwithstanding. Sheriff to pay the ancient fees, &c. and charge same to the King.

3. And it is further enacted by the authority aforesaid, that every Sheriff or other officer or officers aforesaid, who shall not make the returns according to the true intent and meaning of this Act, shall forfeit 7 & 8 W. 3, c. 25, s. 1.

Officer of cinque ports allowed six days from receipt of writ.

Sheriff, &c. not making return.

Penalty. for every such offence the sum of five hundred pounds; one moiety whereof shall be to his Majesty, and the other moiety to him or them that shall sue for the same, to be recovered by action of debt, bill, plaint or information, in any of his Majesty's courts of record at Westminster, wherein no essoin, protection, privilege or wager of law shall be allowed, nor any more than one imparlance.

Double return. It may be that there is an equality of votes, if so, as the Sheriff, quâ returning officer (*m*), has no casting vote, he must return both, just as if two were required by the writ or precept —this is called a double return; other cases may likewise arise where a double return is justifiable: but if “any officer wilfully, falsely, and maliciously return more persons than are required to be chosen by the writ or precept, an action with double damages may be had against him and the parties who willingly procure the same (*n*),” independently of the censure and punishment that he may be subjected to at the bar of the House of Commons.

A special return. Circumstances may occur to make a *special return*, as where every attempt made to proceed in the election has failed because of riot, the House will accept of such a return; but the necessity for such a return must be very apparent to justify the officer (*o*).

Special Return.

By virtue of the writ of election to us directed (to which this is annexed), proclamation being made of the premises in the said writ mentioned, and of the day and place, as by the said writ is directed: We the within named Sheriffs did, in obedience thereto, on, &c. proceed in order to cause two citizens of the most sufficient and discreet of our said city, freely and indifferently to be chosen according to the form of the statute in such case made and provided; when there appeared as candidates *A. B.* and *C. D.*, thereupon a poll was opened in the usual accustomed manner and proceeded in a peaceable and orderly way for about the space of half an hour, at the end of which space of time divers persons, and particularly colliers and others not inhabitants or freemen of the said city, to the number of 500 men or more, with a blue flag carried before them, and having blue and white cockades in their hats (being the marks and badges by which the party of the said *A. B.* was distinguished), tumultuously and riotously assembled together at the place of election, and did disturb and impede the said election, and did in our view violently, riotously and outrageously assault, beat, strip, bruise and otherwise illtreat a great number of voters attending at the place of election and offering to poll for the said *C. D.*, and then and there disturbed, impeded and obstructed the

(*m*) 1 Peckw. 16, n. (*a*).
(*n*) 7 & 8 Will. 3, c. 7, s. 3.

(*o*) 2 Peckw. 383; Coventry, 38 Journ. 8; 2 Journ. 22; 18 Journ. 21.

said voters from giving their votes; the said rioters and disturbers at the same time openly and publicly threatening that no person should come up to poll for the said *C. D.*: Whereupon we adjourned the said poll to *Monday* the 11th of the said month of September, and continued the same, by divers other adjournments from day to day, to the in order that the said election might be made; but the said poll was disturbed and impeded from time to time by like tumults, riots, and by assaults and other outrages committed upon the persons of many voters offering to poll for the said *C. D.* by the said rioters and disturbers: And we, assisted by the magistrates and peace officers, endeavouring, by an exertion of all the power and authority vested in us, and particularly having appointed 236 additional constables to preserve the peace, to suppress the said tumults and riots and to remove the said obstruction, and to open a free access to the booth for the voters on both sides to come up to poll, were, notwithstanding, riotously and forcibly assaulted and driven back and otherwise illtreated, to the imminent danger of our lives; and the voters were by number and force violently and illegally hindered from giving their votes, so that out of 2000 voters and upwards no more than eighty-three were polled and a free election could not be had, but we were by means of said tumultuous and illegal force interrupted and obstructed in the execution of the said writs and of our duty as officers in not making the said election; for which causes aforesaid we did not cause to be elected, nor could we cause to be elected, two citizens of the said city and county according to the exigency, form and effect of the said writs. Given under our hands and seals, this, &c.

I. N.

T. B.

Given under my hand, this, &c.

C. F., Deputy Clerk of the Crown.

In this case however the House, after hearing counsel and witnesses, resolved that the Sheriffs were not prevented by riot or otherwise, and were committed to *Newgate*.

No return can be impeached for want of form or surplusage in matter, if made by the proper officer and have substance(*p*). Informal return and amendment.

But if any omission or mistake be made in the return, it must be amended before the person elected can take his seat, although duly elected; for a good election is only a ground to amend an undue return, but not to admit the elected without a good return. The House alone, after a return once made, has the power to alter or amend it, and it is done in this way—on motion by a member the House orders the clerk of the crown in Chancery to attend with the return, and he then amends it as the House may direct. But must be amended before the member take his seat.

*Death of
Sheriff.*

In case the High Sheriff died between the issuing the writ and its return, the House formerly ordered a new writ to be issued to the new Sheriff (*q*); but this seems unnecessary, since the statute of 3 Geo. 1, c. 15, s. 8, came into operation, as his Under-Sheriff or deputy must execute all writs, &c. in the name of the deceased Sheriff until another Sheriff be appointed and sworn (*r*).

Change of.

In case the High Sheriff should go out of office after election and before return, it may be delivered to the incoming Sheriff, who may return it with a special return.

(*q*) 11 Journ. 338; Gloucester, 14 Journ. 88.

(*r*) *Ante*, p. 25.

SECTION VII.

SHERIFF'S COURT UNDER WRIT OF TRIAL.

(3 & 4 Will. 4, c. 42, s. 17.)

BEFORE the above mentioned statute, trials were only at bar or nisi prius ; but now " in any action depending in any of the said superior courts for *any debt or demand* in which the sum sought to be recovered and indorsed on the writ of summons shall not exceed 20*l.*, it shall be lawful for the Court, in which such suit shall be depending, or any judge of any of the said Courts, if such Court or judge shall be satisfied that the trial will not involve *any difficult question of fact or law*, and such Court or judge shall think fit so to do, to order and direct that the issue or issues joined shall be tried before the sheriff of the county where the action is brought, or any judge of any Court of record for the recovery of debt in such county, and for that purpose *a writ* shall issue, directed to such Sheriff, commanding him to try such issue or issues, by a jury to be summoned by him, and to *return* such writ, with the finding of the jury thereon indorsed, at a day certain, in term or in vacation, to be named in such writ ; and thereupon such Sheriff or judge shall summon a jury and shall proceed to try such issue or issues. By the 4 & 5 Will. 4, c. 62, s. 20, the same power is given to the Court of Common Pleas of the county palatine of Lancaster.

Ancient modes of trial.

Writ of trial.

Return thereof.

Court of Common Pleas at Lancaster.

The statute until of late was considered to apply only to *debts and liquidated demands* ; but by the cases of *Price v. Morgan* (a) and *Allen v. Pink* (b) the word "*demand*" is construed to mean a claim *ejusdem generis* with debt, though not strictly liquidated. It does not apply to torts (c), and if an action of tort be tried by the Sheriff, (even by consent,) no judgment can be given for either party (d) ; if the sum indorsed on the writ of summons exceeds 20*l.*, the Court on motion, at the instance of the plaintiff, will amend the indorsement by reducing the sum indorsed on the back of it to that claimed in the particulars, so as to obtain a writ of trial (e).

To what the statute applies and what not.

Indorsement amended.

(a) 2 M. & W. 63.

(b) 4 M. & W. 140.

(c) *Watson v. Abbott*, 2 Dowl. 215.(d) *Smith v. Brown*, 5 Dowl. 736.(e) *Frodsham v. Round*, 4 Dowl. 569 ; *Edge v. Shaw*, *ibid.* 189 ; but see *Trotter v. Bass*, 1 Scott, 403.

When writ
of trial
issues.

Issue must be joined in the cause before making the application for the writ of trial,—when made, it may be made either to the Court or to a judge at chambers; it seems that when an application has been made to a judge at chambers, and order refused, the Court will not entertain a motion for reviewing his decision, at least unless what took place before the judge at chambers be brought specially before the Court (*f*). The question of an order or no order is absolutely in the discretion of the judge (*g*).

Its issuing
or not is in
the judge's
discretion.

Affidavit to obtain Writ of Trial.

In the Q. B.

Between { *A. B. Plaintiff,*
and
C. D. Defendant.

G. A., of _____, gentleman, the plaintiff's attorney in this cause, maketh oath and saith that this action is brought to recover _____, and that the sum sought to be recovered and indorsed on the writ of summons does not exceed *twenty* pounds; and this deponent further saith that issue has been joined herein, and that the trial, as this deponent verily believes, will not involve any difficult question of fact or law.

Sworn, &c.

G. A.

The Issue, when it is directed to be tried by the Sheriff (h).

After the joinder of issue proceed as follows:] And forasmuch as the sum sought to be recovered in this suit, and indorsed on the said writ of summons, does not exceed 20*l.*, hereupon on the [*teste of writ of trial*] day of _____, in the year _____, pursuant to the statute in that case made and provided, the sheriff is commanded that he summon twelve, &c., who neither, &c., who shall be sworn truly to try the issue above joined between the parties aforesaid, and that he proceed to try such issue accordingly; and when the same shall have been tried, that he make known to the Court here what shall have been done by virtue of the writ of our lady the Queen to him in that behalf directed, with the finding of the jury thereon indorsed on the _____ day of _____, &c.

Writ of Trial (i).

Victoria, &c. to the sheriff of our county of _____, greeting: Whereas *A. B.*, in our Court before us at Westminster, [*or*, "in our Court before our justices at Westminster" *or*, "in our Court before the barons of our Exchequer at Westminster," as the case may be], on the [*date of first writ of summons*] day of _____ last impleaded *C. D.* in an action on promises [*or as the case may be*]; for that whereas one, &c. [*here recite the declaration as in a writ of inquiry*], and thereupon he brought suit. And whereas the defendant, on the _____ day of _____ last, by _____,

(*f*) *Davies v. Lloyd*, 4 Dowl. 478.

(*g*) *Ibid.*

(*h*) These forms are given by the rules of Hil. Term, 4 Will. 4.

(*i*) This writ is engrossed on parchment and sealed, but not signed, (Hil. Term, 4 Will. 4, s. 1, r. 19,) and then

left (together with the rule or order annexed to it) at the Sheriff's office a reasonable time (at least two days) before the day of trial, upon which the jury is summoned, witnesses subpoenaed, notice of trial given, &c. as on a trial at nisi prius.

his attorney, [*or as the case may be,*] came into our said Court and said, [*here recite the pleas and pleadings to the joinder of issue*], and the plaintiff did the like. And whereas the sum sought to be recovered in the said action and indorsed on the writ of summons therein, does not exceed 20*l.*; and it is fitting that the issue above joined should be tried before you the said Sheriff of _____ : we therefore, pursuant to the statute in such case made and provided, command you that you do summon twelve free and lawful men of your county duly qualified according to law, who are in nowise akin to the plaintiff or to the defendant, who shall be sworn truly to try the said issue joined between the parties aforesaid, and that you proceed to try such issue accordingly; and when the same shall have been tried in manner aforesaid, we command you that you make known to us at Westminster [*or, "to our justices at Westminster," or, "to the barons of our said Exchequer," as the case may be,*] what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed, on the _____ day of _____ next. Witness _____, at Westminster, the _____ day of _____, in the _____ year of our reign" (k).

Notice of Trial.

Take notice that the issues joined in this cause will be tried on, &c. instant, at twelve o'clock in the forenoon, before the Sheriff of W., at the house of Mrs. *Herd*, commonly called the King's Head, at A., in the county of W. [*where counsel will attend.*] Dated, &c. (l).

By the 18th section of the Law Amendment Act, (3 & 4 Will. 4, c. 42,) it is declared, "that the Sheriff or his deputy presiding at the trial of such issue or issues, shall have the like powers with respect to amendment on such trial as are hereinafter given to judges at nisi prius," it becomes then material to inquire what powers with respect to amendment judges at nisi prius have thereafter given to them. Sect. 23, after reciting that delay or failure of justice often took place by reason of *variances* as to some particular or particulars between the *proof* and the *record*, or setting forth on the record or document, on which the trial was had, of contracts, customs, prescriptions, names, and other matters or circumstances not material to the merits of the case, and by the mistatement of which the opposite party could not have been prejudiced, and the same could not in any case be amended at the trial, except when the variance was between any

Duties and powers at the trial. Amendment.

(k) When it appeared by the Sheriff's return that it was executed a day after the return day, the Court intimated that they would amend the return if necessary; *Sherman v. Tinsley*, 3 Hodges, 32; but in a later case this position seems disputed; and Parke, B., says "if the trial of the cause has not commenced before the writ is returnable, the proper course

seems to be to apply to a judge to have the time extended;" *Mortimer v. Preedy*, 3 M. & W. 605.

(l) The rule respecting "*short notice of trial*" applies equally to the case of a trial before the Sheriff; *Dignam v. Mostyn*, 6 Dowl. 547. The retaining an *irregular* notice is no waiver of the irregularity; *ibid.*

matter in *writing* or in *print* produced in evidence, and the *record* enacts, " that when any variance shall appear between the proof and the recital or setting forth on the record, writ or document on which the trial is proceeding, of any contract, custom, prescription, name, or other matter in any particular or particulars in the judgment of such Court or judge *not material to the merits of the case*, and by which the opposite party *cannot have been prejudiced* in the conduct of his action, prosecution, or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, on postponing the trial to be had before the same or another jury, or both payment of costs and postponement as such Court or judge shall think reasonable ; and in case such variance shall be in some particular or particulars in the judgment of such Court or judge *not material to the merits of the case*, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution or defence, then such Court or judge shall have power to cause the same to be amended upon payment of costs to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or judge shall think reasonable ; and after any such amendment the trial shall proceed, in case the same shall be proceeded with, in the same manner in all respects both with respect to the liability of witnesses to be indicted for perjury and otherwise, as if no such variance had appeared." It then states that *the order for amendment* shall be indorsed on the writ, and returned together with the writ. Sect. 24 states " that the said Court or judge shall and may, if they or he think fit, in all such cases of variance, instead of causing the record or document to be amended as aforesaid, direct the jury to find the fact or facts according to the evidence thereupon, such finding shall be stated on such record or document, and notwithstanding the finding on the issue joined, the said Court, or the Court from which the record has issued, shall, if they shall think the said variance immaterial to the merits of the case, and the mistatement such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case."

Power of
the Sheriff
to direct the
facts to be
proved spe-
cially.

As the statute is now extended to more (*m*) than what is strictly a debt or liquidated demand, the Sheriff will necessarily be called upon occasionally to exercise the power given him by the above section as to amendments.

The result of the decisions at *Nisi Prius* therefore should be briefly considered, and a few instances cited by way of guidance in case of need. The principle deducible from the decisions at *Nisi Prius* seems to be this as regards the Sheriff, that he has the power of amendment wherever the proof varies from the record; that is, *in any particular not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action or defence*; thus where a contract by which *A.* guaranteed to *B.* the amount of a debt to be contracted with *B.* by *C.* was described in pleading as a promise to pay the debt, the judge at *nisi prius* allowed an amendment by substituting "*guarantee*" for "*pay*" (*n*); so the date of a bill of exchange not laid according to the fact was amended, as from the 26th to the 29th of March (*o*). The name of a field, *Clover Moor* for *Clover Hill*, was amended (*p*); but when several defendants were sued in debt and the evidence did not fix all of them the judge refused to amend by striking out the names of the defendants who were not proved to have been liable to the debt (*q*); where the action was in debt, and the damages were laid at 10*l.* the judge refused to increase the amount so as to recover all interest due, which amounted to considerably more than 10*l.* (*r*). Thus far as to the form of amendment.

What may be amended and what not.

Examples of amendment.

The Sheriff has the power of directing a nonsuit (*s*); but whether he has the power to postpone the trial has not been settled; it seems that the application should be made to a judge (*t*); he has no power to certify under the 43 Eliz. c. 6, s. 2, to deprive the plaintiff of costs (*u*); (nor has the Court power to do so (*x*),) nor has the Sheriff power to certify under the

Sheriff's power to nonsuit, postpone trial, costs, &c.

(*m*) *Price v. Morgan*, 2 M. & W. 53; *Allen v. Pink*, 4 M. & W. 140.

(*n*) *Hanbury v. Ella*, 1 A. & E. 61.

(*o*) *Bentzing v. Scott*, 4 Car. & P. 24.

(*p*) *Hosell v. Thomas*, 7 C. & P. 342.

(*q*) *Cooper v. Whitehouse*, 6 Car. & P. 545.

(*r*) *Watkins v. Morgan*, 6 Car. & P. 661.

(*s*) *Watson v. Abbott*, 2 Cr. & M. 150; 2 Dowl. 215.

(*t*) *Packham v. Newman*, 3 Dowl. 165; 1 C. M. & R. 584.

(*u*) *Wardroper v. Richardson*, 1 Ad. & El. 75; 3 N. & M. 839, S. C.; *Claridge v. Smith*, 4 Dowl. 583.

(*x*) *Story v. Hudson*, 5 Dowl. 558.

Middlesex Court of Request Act, (23 Geo. 2, c. 33, s. 19,) that the freehold or act of bankruptcy was in question, for he is not a judge within the meaning of either of those statutes (y).

Who is to practise as an advocate before him.

He is justified in laying down a rule that no person but a barrister or an attorney is to appear as the advocate of a party on a writ of trial (x).

Pleadings.

With regard to the pleadings it is our intention to lay down only what may be given in evidence under the general plea or general issue, as it is improperly denominated, as the only information which can be of any general use in practice either for the Sheriff or suitors under a writ of trial.

What receivable in evidence under general issue.

In assumpsit or debt (a) the following matters of defence are receivable under the general plea. That the plaintiff is not solely entitled to the money said to be had and received to his use in the declaration (b); in an action for use and occupation, the fact of the mortgagee of the premises having given the defendant notice to pay the rent to him is receivable in evidence under the general plea, if the rent sought to be recovered accrued due *after* the notice; but if the rent accrued due *before* the notice this defence must be specially pleaded (c); the defence of negligence (d), or that the work, &c. was done under a condition that if it did not suit or succeed, nothing should be paid for it (e), or that it was to be done without fee or reward (f), or that there is no sufficient contract to satisfy the Statute of Frauds; are receivable under the general issue (g). So where *non-assumpsit* is pleaded to an action for work done by plaintiff as an apothecary, the plaintiff is liable to be nonsuited under the statute of 55 Geo. 3, c. 194, s. 21, if he fail to prove his certificate,

(y) *Pritchard v. McGill*, 2 M. & W. 380.

(x) *Tribe v. Wingfield*, 2 M. & W. 128.

(a) The following instances are not meant to include all the decisions; they are selected with a view to the issues triable before the Sheriff; for further information we have great pleasure in referring to an excellent work on the subject by Mr. Lutwyche, "An Enquiry into the Principles of Pleading the General Issue."

(b) *Solly v. Neish*, 2 C. M. & R. 358.

(c) *Waddilove v. Barnett*, 4 Dowl. 347.

(d) *Hill v. Allen*, 2 M. & W. 283.

(e) *Grounsell v. Lamb*, 1 M. & W. 352; *Hayelden v. Staff*, 5 Ad. & E. 153.

(f) *Jones v. Nanny*, 5 Dowl. 90.

(g) *Elliott v. Thomas*, 3 M. & W. 170.

or that he was in practice before the 5th day of August, 1815 (*h*), and that too although the defendant has pleaded the general plea as to part, and as to the residue a tender (*i*); credit not unexpired (*j*); badness of quality (*k*); that the article did not answer to the warranty given (*l*); that plaintiff had agreed to do the work declared for (on a certain event which had occurred) for a certain sum (*m*).

But that the money (for which the action was brought) was received in respect of an *illegal* wager is not receivable under the general plea (*n*); illegality of consideration, either by common or statute law, is a defence which must be specially pleaded; indeed every fact which shows the contract *void* (*o*) or *voidable* (*p*) must be stated on the record; for some time after the promulgation of the Pleading Rules of Hilary Term, 4 Will. 4, doubts were entertained even on the bench whether *fraud*, which rescinds the contract *ab initio*, was receivable in evidence under the general plea, but the decisions now incline to uniformity and agree that it must be specially pleaded (*q*).

What not admissible under general issue.

"*At the return* of any such writ for the trial of such issue or issues as aforesaid, costs shall be taxed, judgment signed, and execution issued *forthwith* (*r*), unless the Sheriff or his deputy, or the judge before whom such trial shall be had, shall *certify* (*s*)

Execution.

(*h*) *Shearwood v. Hay*, 5 Ad. & El. 383; *Morgan v. Ruddock*, 4 Dowl. 311; *Wagstaffe v. Sharpe*, 3 M. & W. 521; and cases cited.

(*i*) *Ibid*.

(*j*) *Broomfield v. Smith*, 1 M. & W. 542; *Webb v. Fairman*, 3 M. & W. 473.

(*k*) *Cousins v. Paddon*, 2 C. M. & R. 547.

(*l*) *Dickers v. Neale*, 1 M. & W. 556.

(*m*) *Jones v. Reade*, 5 Ad. & E. 529.

(*n*) *Martin v. Smith*, 6 Dowl. 629.

(*o*) *Icely v. Grew*, 6 Car. & P. 671; *Woodhouse v. Swift*, 7 Car. & P. 310; *Tidd's New Pr.* 324, 325; *Potts v. Sparrow*, 1 Bing. N. C. 594.

(*p*) *Tidd's New Pr.* 325; *Barnett v. Glossopp*, 1 Bing. N. C. 633.

(*q*) *Icely v. Grew*, *supra*; *Woodhouse v. Swift*, *supra*; *Tabram v. Warren*, 1 T. & G. 153.

(*r*) Even on the same day the verdict is obtained; *Nichols v. Chambers*, 4 Tyr. 836.

(*s*) If the Sheriff certifies or gives leave for the purpose the Court may set aside the verdict and enter a nonsuit; *Ricketts v. Barman*, 4 Dowl. 578; but a motion for entering a nonsuit cannot be made unless such leave has been reserved; *ibid*. The Court will not grant a new trial if the verdict be for less than 5*l*; *Packham v. Newman*, 1 C. M. & R. 585; *Lyddon v. Combes*, 5 Dowl. 560; *Williams v. Evans*, 2 M. & W. 220; *sed vide Owen v. Pugh*, 1 T. & G. 26. The Court will not hear a motion for a new trial unless the Under-sheriff's notes be produced and verified by affidavit; *Mansfield v. Brearey*, 1 Ad. & El. 347; or their non-production accounted for by affidavit of the Under-sheriff's refusal to produce them;

Certificate
to stay
judgment.

under his hand upon such writ that judgment ought not to be signed until the defendant shall have had an opportunity to apply to the Court for a new inquiry or trial, or a judge of any of the said Courts shall think fit to order that judgment or execution shall be stayed till a day to be named in such order; and the verdict of such jury, on the trial of such issue or issues, shall be as valid and of the like force as a verdict of a jury at nisi prius." s. 18.

Verdict,
effect of.

Certificate.

I hereby certify that judgment ought not to be signed until the within-named defendant shall have had an opportunity to apply to the Court for a new trial in this cause.
A. B. [Under-sheriff.]

Postea.

Afterwards, on the day of , in the year of our Lord 18 , before me, Sheriff of the county of , came as well the within-named plaintiff as the within-named defendant, by their respective attornies within named, and the jurors of the jury by me duly summoned, as within commanded, also came, and being duly sworn to try the said issue within mentioned on their oath, said, that [*&c. here state the finding of the jury as in other cases on trials at nisi prius.*]

The answer of M. A. Sheriff.

The like, in case of a Nonsuit (t).

[*Ut supra, and then "duly sworn to try the issue within-mentioned," &c."*] And were ready to give their verdict in that behalf; but the said A. B. being solemnly called, came not, nor did he further prosecute his said suit against the said C. D.

Form of Judgment for Plaintiff.

[*Copy the issue and then proceed as follows.*] Afterwards, on the [*day of signing judgment*] day of , in the year , came the

in the latter case, the facts proved at the trial must be sworn to; *Hall v. Middleton*, 4 N. & M. 368; *Hellings v. Stevens*, 4 Tyr. 270; 2 Dowl. 352. The Sheriff's notes need not be filed; *Mansfield v. Brearey*, *supra*. When an Under-sheriff refused to produce his notes, after the Court had required their production, the Court made him pay the costs consequent on such refusal; *Metcalf v. Parry*, 3 Dowl. 93; but he is not answerable for his agent's conduct in withholding them, unless it is shown that the latter acted under his direction; *ibid*. The affidavit verifying the Under-sheriff's

notes need only state, that the paper annexed contains the notes sent by the Under-sheriff to the Court; *Hellings v. Stevens*, 4 Tyr. 1001. Affidavits are admissible on the other side of evidence given at the trial which does not appear in the notes; *Lilley v. Johnson*, 2 M. & W. 386; *sed vide Jones v. Howell*, 4 Dowl. 176; the Court will not compel the Under-sheriff to make an affidavit of circumstances which occurred at the trial; *Power v. Horton*, 3 Hodg. 14.

(t) These forms are given by R. Hill. 4 W. 4.

parties aforesaid, by their respective attorneys aforesaid, [or as the case may be,] and the said Sheriff before whom the said issue came on to be tried, hath sent hither the said last-mentioned writ, with an indorsement thereon, which said indorsement is in these words, to wit [*copy the indorsement*](u): Therefore it is considered that the said A. B. do recover against the said C. D. his said damages, costs, and charges by the jurors aforesaid, in form aforesaid assessed; and also £ for his costs and charges by the Court here adjudged of increase to the said A. B. with his assent; which said damages, costs, and charges in the whole amount to £ , and the said C. D. in mercy, &c. (v)

Execution as in other cases.

Execution,
how award-
ed.

SECTION VIII.

SHERIFF'S COURT UNDER WRIT OF INQUIRY.

After judgment by default, or on demurrer, or nul tiel record, when the judgment is merely *interlocutory*, which is always the case in assumpsit, covenant, case, trespass, and replevin (in debt and ejectment the judgment being final), the amount of damages is usually ascertained by a

In what
actions writ
of inquiry
necessary.

Writ of Inquiry.

Victoria, &c. To the Sheriff of W. [or "to our Chancellor of our county palatine of Lancaster, or to his deputy there"], greeting: Whereas A. B. lately in our Court before us, [or in C. P. "before our justices," or in E. P. "before our barons of our Exchequer,"] at Westminster, by his attorney complained of C. D., who was summoned to answer the said A. B. in an action *on promises*. For that whereas [*recite the declaration*], to the damage of the said A. B. of £ , and thereupon he brought suit, &c. And such proceedings were thereupon had in our said Court that the said A. B. ought to recover against the said C. D. his damages on occasion of the premises. But because it is unknown to our said Court what damages the said A. B. hath sustained by means of the premises aforesaid; therefore we command you [that by our writ under the seal of our said county palatine, to be duly made and directed to the Sheriff of the same county, you command the said Sheriff] that by the oath of twelve good and lawful men of your bailiwick you [he] inquire what damages the said A. B. hath sustained, as well by means of the premises aforesaid as for his costs and charges by him about his suit in this behalf expended, and that you send to us [or in C. P. "to our justices," or "to our barons"], at Westminster, on, &c. the inquisition which you shall thereupon take under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, &c.

(u) The Court refused to stay judgment and execution when on the trial of the cause a bill of exceptions had been tendered to the Under-sheriff,

which he declined to receive; *White v. Hislop*, 4 M. & W. 73.

(v) Pleading rules, Hil. Term, 4 Will. 4.

How issued. The writ is engrossed on parchment, sealed and signed, (except in the Queen's Bench (x)); the day on which it is to be executed should be indorsed upon it, and if left at the Sheriff's office, (which should be the day before at latest, R. H. 23 Geo. 3,) the Sheriff will summon a jury accordingly; it is now *tested* on the day on which it is issued in actions within the Uniformity of Process Act, and made *returnable* on any day certain in term or vacation (1 Will. 4, c. 7, s. 1): The House of Lords has no power to award a writ of inquiry (y).

Teste and return.

Notice of inquiry.

If the writ is to be executed in *London* or *Middlesex*, and the defendant lives within forty miles of London, eight days notice must be given; if defendant resides at a greater distance, although he may be in London when the notice is served (z), fourteen days notice is requisite (a); if it is to be executed in *any other county*, eight days notice is sufficient; in replevin, fifteen days notice is requisite, (17 Cha. 2, c. 7, s. 2.) The time is computed exclusive of the first day and inclusive of the last, unless the last be a *Sunday, Christmas-day, Good Friday or a public fast day*. The days in Easter, which in other proceedings are not calculated, are so on writs of inquiry (b); being under "short notice" of inquiry, is the same as short notice of trial, namely, four days in country causes, and two days in town causes (c). The being under terms to take short notice of trial does not bind the defendant to take short notice of inquiry (d); when a term's notice of trial would have been necessary, a term's notice of inquiry is equally necessary (e).

Time how computed.

How notice given.

By the rules of Hil. Term, 2 Will. 4, rule 59, "In all cases where the plaintiff, in pleading, concludes to the country, the plaintiff's attorney may give notice of trial at the time of delivering his replication or other subsequent pleading; and in case issue shall afterwards be joined such notice shall be available, but if issue be not joined on such replication or other subsequent pleading, and the plaintiff shall sign judgment for want thereof, and forthwith give notice of executing a writ of inquiry, *such notice shall operate from the time that notice of trial was given as aforesaid*, and in all cases when the defendant demurs to the

(x) Tidd, 9th edit. 574.

(y) *Vicars v. Haydon*, 2 Cowp. 843.

(z) *Blaew v. Chater*, 6 Taunt. 445.

(a) *Stevens v. Pell*, 2 Dowl. 355.

(b) 2 Chit. Arch. 747.

(c) *Blaew v. Chater*, 6 Taunt. 445.

(d) *Stevens v. Pell*, 2 Dowl. 355.

(e) R. Hil. 2 Will. 4, r. 52.

plaintiff's declaration, replication or other subsequent pleading, the defendant's attorney, or the defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of the joinder in demurrer; and in case the defendant pleads a plea in bar or rejoinder, and *the plaintiff demurs*, the defendant's attorney, or defendant, if he plead in person, shall be obliged to accept notice of executing a writ of inquiry on the back of such demurrer." But it is usual to give notice on a separate piece of paper in the following form:—

Notice of Inquiry.

In the Queen's Bench.

Between { A. B. Plaintiff,
and
C. D. Defendant.

Take notice that a writ of inquiry of damages in this cause will be executed on, &c. between the hours of ten and twelve o'clock in the forenoon, at, &c. and [*if the fact*] that the plaintiff will attend by counsel on the execution thereof. Dated, &c.

The like, conditionally on Demurrer, &c.

In the Q. B.

Between { A. B. Plaintiff,
and
C. D. Defendant.

Take notice that in case judgment be given for the plaintiff in this cause, a writ of inquiry will be executed on, &c. *ut suprà*.

It is usually executed before the Sheriff or his deputy (*f*); but where some difficult point of law is likely to arise, or when the facts are important, by leave of the Court or a judge it may be executed before a judge at *Nisi Prius*, (who acts *ministerially* in aid of the Sheriff (*g*)), or if the *venue* is laid in Middlesex or London before the chief justice (*h*).

Before whom executed.

In local actions, the writ may be executed (by order of the Court in which such action shall be depending, or any judge of any of the superior Courts of law at Westminster,) in any other county or place than that in which the *venue* is laid (*i*), and the Court may order a *suggestion* to be entered on the record to that effect.

Where executed in local actions.

It has already been observed, that wherever the judgment is merely interlocutory, the amount of damages are ascertained by a writ of inquiry; but now it is the common practice wherever

Where it may be referred to the master instead of issuing a writ of inquiry.

(*f*) See *Denny v. Frapnell*, 2 Wils. 378.

(*g*) 12 Mod. 610.

(*h*) See 1 Sellon, 344.

(*i*) 3 & 4 Will. 4, c. 42, s. 22.

they are a mere matter of calculation, to have them assessed by an officer of the Court, viz. one of the masters, without any writ of inquiry at all; thus, in actions on bills of exchange and promissory notes (*k*), in covenant for non-payment of rent (*l*), of money lent on mortgage (*m*), or in an action on an award (*n*), or the like. Note. The rule is confined to those cases where it appears on the declaration that the action is brought on the instruments themselves (*o*). Where the damages are not a mere matter of calculation, the Court will not refer it as before suggested, and a writ of inquiry must be issued. Thus on a covenant to indemnify (*p*), on a foreign judgment (*q*), and on a bill of exchange payable in foreign money (*r*); and even in assumpsit for a liquidated sum due upon an agreement (*s*), the Court will not refer it, and this without regard to the form of action; for it is not true as an universal proposition, that even in debt, where the defendant suffers judgment by default, the plaintiff is entitled to final judgment without executing a writ of inquiry. In debt it is true the judgment is always final, that is, *quoad the debt*, and that the damages being in general merely nominal, execution is generally issued out at once without any writ of inquiry; yet when the damages are not nominal, in debt as well as in any other form of action, a writ of inquiry must be issued; thus in an action of debt for foreign money, a jury must find the value of the money; so for use and occupation on a *quantum meruit* (*t*).

When a writ of inquiry must be issued.

Even in debt.

Where there is judgment as to part and issues as to residue. Several defendants. Where there are issues of law and fact.

Where there is judgment by default as to part and issue joined as to the residue, or when one of several defendants suffers judgment by default and the other pleads to issue, or if there be a demurrer to one count and an issue of facts raised on the other, a writ of inquiry is not issued, the damages in such cases are assessed by the jury, who try the issues by virtue of a *special venire* for that purpose (*u*); but if plaintiff has obtained

(*k*) *Shepherd v. Charter*, 4 Term Rep. 275; *Napier v. Schneider*, 12 East, 420; *Holdip v. Otway*, 2 Saund. 107; *Nelson v. Sheridan*, 8 T. R. 395.

(*l*) *Byron v. Johnson*, 8 Term Rep. 410.

(*m*) *Berther v. Street*, 8 Term Rep. 326.

(*n*) See Tidd, 571.

(*o*) *Osborne v. Noad*, 8 Term Rep. 648.

(*p*) *Dennison v. Mair*, 14 East, 622.

(*q*) *Messin v. Mussarene*, 4 Term Rep. 493.

(*r*) *Maunsell v. Mussarene*, 5 Term Rep. 87.

(*s*) Tidd, 571.

(*t*) *Arden v. Connell*, 5 Barn. & Ald. 885; *Bale v. Hodgett*, 7 Moore, 602.

(*u*) 11 Co. 5; *Dicker v. Adams*, 2 B. & P. 63.

judgment on the demurrer, he may execute a writ of inquiry as to that count, and enter a *nolle prosequi* as to the other, provided he do so before final judgment (*x*). Where there is a demurrer as to part and judgment by default as to the residue, plaintiff may either await the result of the demurrer, and then execute a writ of inquiry on both judgments, or execute a writ of inquiry at once on the judgment by default, and assess contingent damages on the demurrer (*y*).

Demurrer to part and judgment by default to residue.

The writ must be executed against *all* the defendants who have suffered judgment by default jointly and not separately; if final judgment be entered up in such a case for several damages, it will be error (*z*).

Damages must be assessed *conjunctim* and not *separatim*.

Notice of Countermand.

In the Q. B. (*a*)

Between $\left\{ \begin{array}{l} A. B. \text{ Plaintiff,} \\ \text{and} \\ C. D. \text{ Defendant.} \end{array} \right.$

I do hereby countermand the notice of executing the writ of inquiry in this cause. Dated, &c.

Notice of Continuance.

In the Q. B.

I do hereby continue the writ of inquiry given you in this cause to the day of , &c.

Subpœna.

Victoria, &c. To J. B. &c. [*the names of witnesses*] greeting: We command you and every of you, that laying aside all and singular businesses and excuses whatsoever, you and every of you be and appear before our Sheriff of , on , at , then and there to testify the truth according to your knowledge in a certain cause now depending in our Court before us, [*or in C. P. "before our justices," or in Exch. "before our barons of our Court of Exchequer,"*] at Westminster, between A. B. plaintiff, and C. D. defendant, in an action *on promises*, in which cause a writ of inquiry of damages will then and there be executed; and this you or any of you shall in nowise omit, under the penalty of 100*l*. Witness, &c.

When it appears that a common jury is improper to assess damages on a writ of inquiry before the Sheriff, the Court will direct the Sheriff to summon a jury from the special jury book (*b*).

A good jury.

(*x*) *Duperoy v. Johnson*, 7 Term Rep. 473.

(*y*) See 2 Chit. Archb. 697, 756, 6th edit.

(*z*) *Mitchell v. Milbank*, 6 T. R. 199; see also 1 Str. Rep. 422.

(*a*) It may be countermanded or continued as a notice of trial may, see *Jones v. Chune*, 1 B. & P. 363.

(*b*) *Price v. Williams*, 5 Dowl. 160.

What is to be inquired into and what evidence the Sheriff is to admit.

We now proceed to consider what evidence the Sheriff is to admit on the inquest. In order to form a correct notion of this, he must know what admissions are made on the record by a judgment by default.

The result of the various authorities may be fairly stated thus: that the cause of action as alleged in the declaration is thereby *admitted*, and that the only disputable point is *the amount of damages*: thus on a declaration for work and labour, the judgment by default admits the fact of some work and labour having been done for the plaintiff, therefore that something is due; but defendant (the amount only being in dispute) may cross-examine plaintiff's witnesses as to whether certain portions of the work had been done on the retainer of the defendant, and seemingly put any questions which tend to reduce the amount of damages (*c*). So upon the same principle a bill of exchange or promissory note declared upon need not be proved, but it must be produced in order to satisfy the jury that nothing has been paid on account of it (*d*); if the bill or note be not produced, the plaintiff may recover *nominal* damages (*e*). But he will not be allowed to give evidence of fraud or of any other matter which would render a contract void, because the validity of the contract is admitted (*f*); nor of evidence to contradict a contract declared upon (*g*); nor will defendant be allowed to give in evidence to reduce the damages any matter which might have been the subject-matter of set-off (*h*).

What not admissible.

In actions on the case, trespass, &c.

In actions on the case, or where the damage actually sustained by the plaintiff, is the measure of the damages to be given by the jury, if the plaintiff do not prove the nature of the injury, and the amount of the damage sustained by him, the jury should give nominal damages merely; but where the jury are to imply the amount of the damages from the nature of the injury, the jury may give more than the nominal damages, without any evidence of the damage being given; thus in an action for words imputing subornation of perjury to the plaintiff at the execution of the writ of inquiry, the counsel for the plaintiff offered no

(*c*) *Williams v. Cooper*, 3 Dowl. 204.

(*d*) *Green v. Hearne*, 3 Term Rep. 301.

(*e*) *Marshall v. Griffin*, 1 R. & M. 41.

(*f*) *Eadom v. Lutman*, 1 Str. Rep. 612.

(*g*) *Stephens v. Pell*, 2 Dowl. 629.

(*h*) *Carruthers v. Graham*, 14 East. 78.

evidence, but merely addressed the jury, who gave 50*l.* damages; the Court held, that they had not estimated damages upon erroneous grounds (i).

Inquisition.

Westmoreland, } An inquisition indented, taken at, &c. on, &c. before
to wit. } G. H. Sheriff of the county aforesaid, by virtue of a writ
of our lady the Queen, to the said Sheriff directed, and to this inquisition
annexed, to inquire of certain matters in the said writ specified, by the
oath of A. and B. [*names of the jurors*], honest and lawful men of the
said county, who being charged and sworn, upon their oath say, that A. B.
in the said writ named, hath sustained damages to the amount of £ ,
besides his costs and charges by him about his suit in this behalf expended,
and for his costs and charges aforesaid the sum of 40*s.* In witness
whereof, as well I, the said Sheriff, as the said jurors, have set our seals
to this inquisition, the day and year above written.

Sheriff's Return.

The execution of this writ appears in the inquisition hereunto annexed.
The answer of G. H. Sheriff.

Inquiry under 8 & 9 Will. 3, c. 11, s. 8.

By the above statute it is provided, "That in all actions which from and after the said 25th day of March, 1697, shall be commenced or prosecuted in any of his Majesty's Courts of record, upon *any bond (k)* or bonds, or on any penal sum for non-performance of any covenants or agreements in any indenture, deed, or writing contained, the plaintiff or plaintiffs *may assign as many breaches as he or they shall think fit*; and the jury, upon trial of such action or actions, shall and may assess not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned as the plaintiff upon the trial of the issues shall prove to have been broken, and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions; and if judgment shall be given for the plaintiff *on a demurrer, or by a confession, or nihil dicit*, the plaintiff upon the roll may *suggest* as many breaches of the

(i) *Tripp v. Thomas*, 5 Dowl. & Ry. 276; 3 C. 3 B. & C. 427.

(k) This does not extend to bonds conditioned for the payment of a sum certain at a fixed period, as *post obit* bonds; *Murray v. Stair*, 2 B. & C. 89; nor when it is payable by instalments, when all is to become due on

one default; *James v. Thomas*, 5 B. & Ad. 40; nor when the damages to be assessed would satisfy the entire condition of the bond; *Smith v. Bond*, 10 Bing. 125; nor to a bail-bond; 2 Bos. & P. 446; nor replevin bond; *Middleton v. Bryan*, 3 M. & S. 155; 2 Saund. 187, n. 2.

covenants and agreements as he shall think fit, upon which shall issue a writ to the Sheriff of that county where the action shall be brought to summon a jury to appear before the justices or justice of assize or nisi prius of that county, to inquire of the truth of every one of those breaches, and to assess the damages that the plaintiff shall have sustained thereby; in which writ it shall be commanded to the said justices or justice of assize or nisi prius, that he or they shall make a return thereof to the Court from whence the same shall issue at the time in such writ mentioned; and in case the defendant or defendants, after such judgment entered, and before any execution executed, shall pay unto the Court where the action shall be brought, to the use of the plaintiff or plaintiffs, or his or their executors or administrators, such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution of the said judgment shall be entered upon record; or if by reason of any execution executed the plaintiff or plaintiffs, or his or their executors or administrators, shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands, or goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding, in each case such judgment shall remain, continue, and be as a further security to answer to the plaintiff or plaintiffs, and his or their executors or administrators, such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing contained, upon which the plaintiff or plaintiffs may have a *scire facias* upon the said judgment against the defendant, or against his heir, terre-tenants, or his executors or administrators, suggesting other breaches of the said covenants or agreements, and to summon him or them respectively to show cause why execution shall not be had or awarded upon the said judgment, upon which there shall be the like proceeding as was in the action of debt upon the said bond or obligation for assessing of damages upon trial of issues joined upon such breaches, or inquiry thereof, upon a writ to be awarded in manner as aforesaid, and that upon payment or satisfaction in manner as aforesaid of such future damages, costs, and charges as aforesaid, all further proceedings on the said judgment are

again to be stayed, and so *toties quoties*, and the defendant his body, lands, or goods, shall be discharged out of execution as aforesaid."

But this statute is altered by the 3 & 4 Will. 4, c. 42, s. 16. Where the breaches *are suggested on the roll*, "the writ shall, unless the Court where such action is pending, or a judge of one of the said superior Courts shall otherwise order, direct the Sheriff of the county where the action shall be brought to summon a jury to appear *before such Sheriff, instead of the justices or justice of assize or nisi prius* of that county, to inquire of the truth of *the breaches suggested*, and assess the damages that the plaintiff shall have sustained thereby, and shall command the said Sheriff to make return *(1)* thereof to the Court from whence the same shall issue *at a day certain in term or in vacation*, in such writ to be mentioned; and such proceedings shall be had after the return of such writ as are in the said statute in that behalf mentioned, in like manner as if such writ had been executed before a justice of assize in nisi prius."

(1) As to the mode of making the return, see *ante*, p. 215.

CHAPTER III.

OFFICER OF THE COURTS OF LAW.

Attendance upon Courts. ANOTHER and not unimportant branch of his duties consists in his attendance, &c. upon different Courts of Law as a *ministerial* officer;—not unimportant, for independently of the obligations upon him to do so either in his own proper person or by deputy (*a*), it is indeed natural to suppose that duties of such a kind are attended with no little anxiety on the Sheriff's part;—an anxiety to discharge them with all becoming dignity and respect, and to comply as near as may be with the accustomed forms observed by his predecessors.

SECTION I.

The names of the Courts upon which he must attend. The Courts upon which he is obliged to attend ministerially are the following :—
1. The General Commissioners of Oyer and Terminer and Gaol Delivery (*b*).
2. The Special (*c*), &c.
3. Court of Quarter Sessions.

Nature of his duties. His duties before and at and after the Courts are holden, mainly consist in summoning juries, *nisi prius*, crown, special juries and viewers; proclaiming the assizes; attending the sittings of the Court; in making his return to the precepts; and

(*a*) 8 Term Rep. 617; 1 Hale, 597.

(*b*) In reference to civil causes styled "*justices of Nisi Prius*;" criminal, "*oyer and terminer and gaol delivery*." Note—"judges of assize" is in strictness improper, the writ of assize being entirely abolished by the statute of 3 & 4 Will. 4, c. 27, s. 36.

(*c*) Sometimes, upon urgent occa-

sions, the Queen issues a *special and extraordinary commission* of oyer and terminer and gaol delivery, confined to those offences which stand in need of immediate inquiry and punishment, upon which the course of proceeding is the same as upon general commissions.

lastly, in carrying into execution the sentence of the law on criminals.

With regard to the Commissioners of the former Courts, general as well as special, (the nature of their respective commissions extending somewhat too far beyond the proper limits of our subject,) it is our intention simply to refer in case of need to the following authorities—13 Edw. 1, c. 30; 14 Edw. 3, c. 16; 27 Edw. 1, st. 1, c. 3; 2 Edw. 3, c. 2; 2 Hawk. P. C. chap. 5, 6, 7; Cr. on Courts, 125; 4 Burr. Rep. 2085.

Commissioners of
oyer and
terminer.

By a statute in the reign of his late Majesty, intituled "*An Act for the Appointment of convenient Places for the holding of Assizes in England and Wales (d)*," her Majesty in council is empowered from time to time to direct *at what places* in any county assizes and sessions of gaol delivery shall be held, and that they may be holden at more than one place in a county on the same circuit, likewise to divide counties for the purpose of holding assizes in different divisions of the same county; and by the last section to direct the Court of Common Pleas at Lancaster to be holden at any one or more places in the county, and to divide the county for that purpose.

Place of
holding
assizes.

Before the Commissioners go upon their respective circuits, they issue their precepts to the Sheriffs, on the receipt of which the Sheriffs issue their warrants to their bailiffs.

Judge's pre-
cept before
going cir-
cuit.

Warrant to Summon Assize (e).

Cumberland, } G. A. Esq. Sheriff of the county aforesaid, to T. D., my
to wit. } bailiff, [the bailiff of the liberty of P.], greeting: by
virtue of the precept of Sir James Parke, Knt., one of the barons of her
Majesty's Court of Exchequer of Pleas, and of Sir John Taylor Coleridge,

(d) 3 & 4 Will. 4, c. 71.

(e) The warrant should be issued forthwith, as by the statute of 6 Hen. 6, c. 2, the bailiffs must make their returns to the Sheriffs *eight days* before the session, upon pain of 40*l.* And as many should be issued as the Sheriffs may think needed for the purposes within mentioned; it should not now, we conceive, be directed to the bailiff of a hundred, but to a bailiff generally, and simply because the jury, by the 6 Geo. 4, c. 50, is to come not from a

hundred, but from the body of the county; see *post*, "Jury," &c. Again, the names are only to be inserted which each bailiff is to summon; Impsey, p. 360; these warrants, summonses, &c. are all printed. If any thing is to be done within a liberty, the warrant should be directed to the bailiff of the liberty, and not contain a "*non omittas*" clause. The warrant must contain the *substance* of the precept.

Knt., one of the justices of our lady the Queen, before the Queen herself, at Westminster, justices assigned to take the assizes in and for the said county, I command you that you cause to come before the said justices at C., in the county aforesaid, on the day of next coming, all writs, jurats, certificates, before whatsoever justices to be taken, &c. And also that you cause to come before her said Majesty's justices, at the time and place aforesaid, such and so many honest and lawful men of the county (f) aforesaid, whose names are hereunder written, to do those things which, on the part of our said lady the Queen, shall be then and there enjoined them; and command you also, that you make public proclamation in and through the whole county aforesaid (g), that all those who will prosecute any prisoner in any prison or gaol in the county aforesaid, or at large on bail, that they be then and there present to prosecute them, as shall be just; and also that you give notice to all justices of the peace (h), chief constables, coroners, stewards and bailiffs of liberties within the county aforesaid, that they be then and there with their rolls, records, indictments and other memorandums, to do those things which in this behalf shall belong unto them to be done. And further, by virtue of the several writs of our said lady the Queen to me directed, I command you that you have before the said justices, at the time and place aforesaid, the bodies of the several jurors, whose names are hereunder written, to serve upon the several juries hereunder mentioned (i); and that you yourself be then there in your own person to attend, do, and perform all those things which belong to your office: And that you have then and there the names of the said justices, chief constables, coroners, stewards, bailiffs of liberties, jurors, &c. Given, &c.

(Seal of office.)

G. A., Esq., High Sheriff.

Proclamation, how made.

(f) *Ante*, 219, n. (e).

(g) Proclamation is usually made by advertisement in the newspapers that circulate in the county, and in this form :—

C. SUMMER ASSIZES, 183 .

THE COMMISSIONS of NISI PRIUS, of Oyer and Terminer, and of General Gaol Delivery for the County of C., will be opened at the Crown Court, in the City of C., on MONDAY, the day of , 183 , before the Honourable Sir EDWARD HALL ALDERSON, Knight, one of the Barons of our Lady the Queen, of her Court of Exchequer, and the Honourable Sir JOHN WILLIAMS, Knight, one of the Justices of our Lady the Queen, of her Court of Queen's Bench, when all Justices of the Peace, Mayors, Coroners, and Bailiffs of Liberties within the said County, and all Jurors, Persons bound by Recognizance, Witnesses, and others having Business, are requested to attend.

G. A., Esq., High Sheriff.

C. 26th June, 183 .

But it may be made in any other mode by placards or otherwise; when inserted in the newspapers it is usually accompanied by the following invitation, but of course this entirely depends upon custom :—

THE HIGH SHERIFF of the County of C. requests the Honour of the Company of the Gentlemen in the Commission of the Peace, and of those summoned upon the Grand Jury, at DINNER, at the INN, C. on the inst.; being the Commission Day above proclaimed.

(h) The names of the magistrates may be obtained of the clerk of the peace, with whom they are recorded.

(i) The names of those who have been on the grand jury may be obtained at the office of the former Under-sheriff; as to their numbers, &c. see *post*, "Grand Jury," it is the custom to summon twenty-three.

1. Grand Jurors' names.
2. Nisi Prius Jurors' names.
3. Crown Jurors' names.

Cumberland, } G. A., Esq., Sheriff of the said county, to T. D. my
to wit. } bailiff, greeting: These are to will and require you im-
mediately upon sight hereof to warn and summon (k) the several persons
hereunder named personally to be and appear upon the jury at the next
commission* of nisi prius [or "of oyer and terminer and general gaol
delivery,"] to be holden for this county at the court house at C., on Sa-
turday the _____ day of _____ next coming, then and there to try the
several issues between the parties; and hereof fail not at your peril.
Given. &c.

[Here insert their names, places of abode, and description.]

Proceed as ante to asterisk, and then say, " of oyer and terminer and general gaol delivery, to be holden, &c., then and there to try such matters and things as shall be given them in charge, and hereof fail not at your peril. Given, &c. G. A. Esq., High Sheriff.

[Names, &c. as ante.]

Cumberland, } G. A., Esq., Sheriff of the said county, to T. D. my
to wit. } bailiff, greeting: You are hereby required to warn and
summon the several persons undernamed personally to be and appear at
the next assizes to be held for this county, on the day of
 , at , to try the said cause (m); [and the said persons are
desired and requested to be and appear at the house known by the sign of
, in , at o'clock in the noon of the same day,
where they will be attended by and persons, appointed by the
Court to show them the premises in question;] and hereof fail not at your
peril. Given under the seal of my office, this day of , 1839.
(Seal of office.) G. A., Esq., High Sheriff.

G. A., Esq., High Sheriff.

The execution of this precept appears more fully by divers panels to the same precept annexed, and further I have caused to be publicly proclaimed throughout my whole bailiwick, that all who shall prosecute against those prisoners be then and there to prosecute against them, as

"*lemen*" is preferable to "*persons*;" and in such a case say "*grand jury*" instead of "*jury*," simply; in other respects the two are similar in form.

(1) If a grand jury, the term "gen-

shall be just. I have also given notice to all justices of the peace, mayors, coroners, escheators, stewards, and also to all chief constables and bailiffs of every hundred and liberty within my county, that they be then and there, in their own person, with their rolls, records, indictments, and other remembrances, to do those things which to their offices in this behalf appertain to be done, as is within commanded me.

The answer of *G. A.*, Esq., High Sheriff.

First Panel (n.)

Westmorland, } Names of the grand jury to inquire for our lady the
to wit. } Queen.
The Honourable *H. C. Lowther*, of
Sir *G. M.*, Bart., of *E.*
&c. &c. &c.

G. A., Esq., High Sheriff.

Second Panel.

Westmorland, } Names of the jury to try traverses and the prisoners
to wit. } at the bar.
A. B. of }
C. D. of }
&c. &c. }

Summoning officer, *G. A.*

Each of the said jurors is by himself separately attached by pledges.—
John Doe and Richard Roe. *G. A.*, Esq., High Sheriff.

Third Panel.

Westmorland, } Names of the jury to try the issues joined, &c. &c.
to wit. }
A. B. of
C. D. of
&c. &c.

G. A., Esq., High Sheriff.

Fourth Panel.

Westmorland, } A calendar of the justices of the peace of our lady the
to wit. } Queen, mayors, coroners, bailiffs of liberties and hun-
dreds, and constables of hundreds, in the county of *W.*, summoned to be
at the commission of nisi prius and general session of oyer and terminer
and gaol delivery, to be holden at in the said county, the
day of , in the year of the reign, &c.

The Names of the Justices.

A. B. of .
C. D. of .

Names of the Mayors.

A. B. mayor of .

(n) The following panels are en-
grossed on parchment and fastened to
the precept, on the back of which
precept is indorsed the foregoing re-

turn; and they should be so delivered
by the hands of the High Sheriff to
the judge or commissioner at the time
he opens the commission.

Names of the Coroners.

C. D. of, &c.

A. B. of, &c.

Names of Bailiffs of Liberties.

A. B., high bailiff of .

Names of the Constables of Hundreds.

Hundred of , A. B. of .

Hundred of , C. D. of .

Names of the Officers.

Hundred of , A. B. of .

Hundred of , C. D. of .

Fifth Panel.

Westmorland, } The calendar (o) of all prisoners being in the gaol of
 to wit. } the said county, and of all prisoners bailed after com-
 mittal by the different magistrates of the said county, &c. &c.

A. B. committed by , charged with ,

C. D. committed by , charged with ,

but afterwards, to wit, on, &c., bailed by John Hill, Esq., of, &c.

G. A., Esq., High Sheriff.

Return of a Distringas Jur.

The execution of this writ appears in the panel hereunto annexed.

G. A., Esq., High Sheriff.

Where a View is directed (p).

I do hereby humbly certify that I have caused the place in question to be shown to A. B., C. D., E. F., &c. [*jurors that attend*], in the panel hereunto annexed, as within I am commanded and required by the said writ.

The answer of G. A., Esq., High Sheriff.

Return of a Hab. Corp. Jur.

The execution of this writ appears in the panel hereunto annexed.

G. A., Esq., High Sheriff.

Return of a Hab. Corp. Jur., where a View was directed and none of the Jury appeared.

By virtue of this writ to me directed, I summoned A. B., &c., being the first twelve jurors within named, to be and appear at the time and

(o) Copies of the crown calendar should be printed and circulated; copies of the nisi prius jury should also be printed on parchment, and one annexed to each venire, and another to each distringas or hab. corp. jur.; see post, "*Jury*," and *Rogers v. Smith*, 1 Ad. & E. 772; 3 Nev. & M. 772;

copies also of the petty jury should be made on parchment to annex to traverses.

(p) The view must be had by six at least, 6 Geo. 4, c. 50, s. 23, and the names of the viewers must be certified in the return.

place within mentioned, and to do as the within writ commands me; and I attended at the time and place within mentioned, to cause the place in question to be shown to six or more of the first named twelve jurors, but the above-named jurors or any one of them did not appear, so that I could not further proceed on the said view of the place in question, as this writ commands me.

The answer of *G. A.*, Esq., High Sheriff.

Return of a Distring. Jur., where a View, and none of the Jurors appeared.

By virtue of this writ to me directed, I caused to be distrained *A. B.*, &c., being the first twelve jurors within named personally to be and appear, &c. [ut supra.]

Return of Summons on an Indictment at the Assizes.

Return of "Nihil."

The within-named *A. B.* and *C. D.* are summoned by good summoners, to wit, [the bailiffs' names.]

Pledges, { *John Dor,*
and
Richard Roe.

But the within-named *S. B.* and *G. B.* have nothing, nor hath either of them any thing in my bailiwick, by which they or either of them can be attached, nor are they or either of them found in the same.

The answer of *G. A.*, Esq., High Sheriff.

Return of Capias on Indictment at Assizes.

By virtue of this writ to me directed, I have taken the bodies of the within-named *A. B.* and *C. D.* whom I have before the Queen's justices within-named, at the day and place as within I am commanded, but the within-named *S. B.* and *G. B.* are not, nor is either of them found in my bailiwick.

The answer of *G. A.*, Esq., High Sheriff.

Issues upon
distringas
and hab.
corp. jur.

By the common law the Sheriff could return no issues upon a venire facias jur., but upon a distringas or hab. corp. jur. it seems that he was bound to return some. By the statute of 35 Hen. 8, c. 6, s. 4, it was enacted, "that upon every writ of *habeas corp.* or *distringas*, with a *nisi prius* delivered of record to the Sheriff, &c., to whom the making of the return doth appertain, the said Sheriff, &c. shall return issues upon every person impanelled and returned upon any such writs at the least 5s., upon an *alias*, 10s., *pluries*, 13s. 4d., and double that sum upon every other:" and by stat. 27 Eliz. c. 6, "The issues upon the first *distringas* are enlarged to 10s., the second 20s., and 30s. on the third."

Besides the duties above suggested as to the return of the precept, &c., there are others which should not be wholly omitted. The High Sheriff and his Under-sheriff must be in constant attendance on the judges during their presence in his county—he must provide them with the accustomed lodgings, &c.—a sufficient number of javelin men, &c. and make the accustomed payments, which, upon proper vouchers being produced, will be allowed to him in the passing of his accounts; what are *usual* payments may be ascertained at the office of the former Under-sheriff; they are not fixed by statute or common law—being so, they necessarily vary according to the custom of each county.

His duties respecting judges' lodging, javelin men, payments, &c.

If it be his misfortune to have to carry into execution the sentence of death upon any prisoner, (God forbid it should!) he empowers another by letter of attorney to do it.

To execute the sentence of death.

Power of Attorney to execute a Prisoner.

To all to whom these presents shall come, greeting: I, G. A. of in the county of W., Esq. High Sheriff of the said county, do hereby appoint, authorize, and depute C. D. of , for me, and in my stead, to execute on the day of next, the sentence of the law passed on the prisoner R. P. at the last assizes for the said county by Sir John Gurney, Knt., one of the Commissioners of oyer and terminer and general gaol delivery for the said county; and to do and perform all things that may be in anywise necessary or expedient in or about the premises.

(Seal of office.)

G. A., High Sheriff.

There used to be for this purpose a warrant under the hand and seal of the judge, as is still practised in the Court of the Lord High Steward upon the execution of a peer (*q*); though in the Court of the peers in parliament it is done *by writ* from the Queen (*r*). That practice has however fallen into disuse, and at this day the Sheriff receives a copy of the calendar signed by the judge, and another from the clerk of the assize signed by him, containing the separate judgments in the margins; and the High Sheriff executes according to the minutes in the margin if there be no reprieve. But it should be observed that this calendar is a mere memorial giving directions to no one; *the judg-*

Formerly by warrant from the judge.

Now by a copy of the calendar,

The judgment in Court, not

(*q*) 2 Hale's P. C. 409.

(*r*) 5 Mod. Rep. 12; S. P. C. 182, Append. 4 B. C. s. 5; see also Sir W. Raleigh's ca. Cro. Jac. 496; Lord Stafford's Ca. State Tr. 3 vol. p.

101; being both in the custody of the Lieutenant of the Tower and beheaded; and also 2 Hale, 31; Foster, 43.

calendar, is the Sheriff's authority to execute.

ment openly pronounced and entered is that which empowers the Sheriff to execute; indeed, Hale says that Rolle would never sign any calendar, but gave his orders openly in Court, with a charge to the Sheriff and gaoler to take notice of them.

Time of execution.

Earl Ferrer's case.

In the case of Earl Ferrers (*s*) this question was put to the judges by the House of Peers, "supposing a peer so indicted and convicted (*of murder, and before the Lords in parliament,*) ought by law to receive such judgment as aforesaid, and the day appointed by the judgment for execution should lapse before such execution done, whether a new time may be appointed for the execution, and by whom?" The answer was:—"supposing the day appointed by the judgment for execution should lapse before such execution done, (which however the law will not presume,) we are all of opinion that a *new time* may be appointed for the execution, either by the High Court of Parliament, before which such peer shall have been attainted, or by the Court of K. B., the parliament not then sitting; the record of the attainder being properly removed."

A person convicted of murder.

Previously to the statute of 6 & 7 Will. 4, c. 30, a person convicted of *murder* was to be executed on the day next but one after that on which the sentence was passed, unless the same should happen to be on Sunday, and in that case on the Monday following, and the sentence was to be pronounced immediately after the conviction, unless the Court should see reasonable cause for postponing the same: but by sect. 2 of that statute it is enacted, "that from and after the passing of this Act sentence of death may be pronounced after convictions for murder in the same manner, and the judge shall have the same power in all respects as after convictions for other capital offences"—and in like manner of a person sentenced at the Central Criminal Court (*t*), for *no report* is made by the Recorder as used to be.

No report now made by Recorder of London.

If a woman quick with child receive sentence of death, she may allege her being with child, in order to get the execution respited, and thereupon the Sheriff shall be commanded to take her into

(*s*) *Fost. Cr. Ca.* 139; see 2 *Ad. & E.* 268.

(*t*) 7 *Will. 4* and 1 *Vict. c.* 76.

a private room and to impanel a jury of matrons (*u*), to examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery (*x*); but Coke and Standford both say that a woman can have no advantage from being found with child, unless she be also found *quick* with child (*y*); this may be true as a theoretical proposition of law, but the mere suggestion of a doubt would be sufficient to stay the execution until the truth was known (*z*).

Execution ought not to be awarded into a different county *Places*. from that wherein the party was tried and convicted, except only where the record of attainder is removed into the Queen's Bench, in which case the Court of Queen's Bench has power to order it where it thinks proper (*a*). It should also be done at *By whom*. the *usual* place, and by the proper officer or his deputy; *by proper officer* is meant by the person who has the *legal* (*b*) custody of the convict.

With regard to a person in the castle of Chester it is enacted (*c*), *In Cheshire*. "that the Sheriffs of the county of the city of Chester (unless the Sheriff of the county be expressly ordered by the judge who tried him to execute such criminal within the county) shall execute sentence of death upon all criminals condemned to die for offences committed within the county of Chester; and the judges, or one of them, of oyer and terminer and gaol delivery, are empowered to order the constable of the castle of Chester to deliver the criminals to the said Sheriffs, and to order the said Sheriffs to execute the criminal as such judges or judge shall think fit." This order is in place of a writ of Habeas Corpus (*d*), which, *Order, effect of*. by the common law, would be requisite in order to remove him from the custody of the constable of the castle, and to empower the Sheriffs of the city or the Sheriff of the county to carry the law into force.

Lord Coke and Sir M. Hale agree in this that no execution *Manner of execution*. can be warranted unless it be pursuant to the judgment. *When*.

(*u*) 3 Inst. 13; Finch. 478; St. P. C. 198.

(*x*) 4 State Tr. 612.

(*y*) 3 Inst. 17; Stand. P. C. 198; *sed vid.* 2 Hawk. P. C. 658, n.

(*z*) See 6 & 7 Will. 4, c. 30.

(*a*) *Rex v. Antrobus*, 2 Ad. & E. 807; 2 Hale's P. C. 410, (edit. 1800).

(*b*) *Ibid.*

(*c*) 5 & 6 Will. 4, c. 1, s. 1.

(*d*) 2 Ad. & E. 805; *Listledale*.

ther the Queen can by her prerogative alter the judgment seems a *vexata quæstio*; the better opinion, however, seems to be, that she can *mitigate* the punishment with regard to the pain or infamy of it (e); but it is equally clear that the Sheriff or other officer cannot do so of his own authority.

To keep the peace.

Being *ex officio* a *conservator pacis*, he should at all such times demand such a *posse comitatus* as will prevent a breach of the peace.

SECTION II.

SESSIONS OF THE PEACE.

Nature of duties herein.

The Sheriff's duties as the ministerial officer of these Courts are *ejusdem generis* as those enumerated and required of him at the Court of oyer and terminer and general gaol delivery; for they differ not in kind but in degree. But as he is obliged to render obedience and attendance only upon such sessions of the peace as are *Courts of Record*, it will be necessary to distinguish which are so and which are not.

Petty sessions.

Firstly, Of a petty or pettil sessions: which is a meeting of two or more justices of the peace, holden by their *own mere motion*, for the execution of some power vested in them by law (f); upon this Court (*not being one of record*) the Sheriff is not obliged to attend.

Special sessions.

Secondly, A special sessions is a meeting of justices holden on a special occasion for the execution of some *particular* branch of their authority; this is not convened *mero motu*, or by the private agreement of magistrates, (and in this it essentially differs from the petty sessions as before observed,) but depend for their legality on a reasonable notice being served on all the magistrates of the division in respect of which it is holden (g).

Special sessions how convened.

The special sessions (except when under statutory regulations) may be convened at the instance of the *custos rotulorum* of the county, of the clerk of the peace, of his deputy, or of two

(e) Foster, 268; 270; 4 Comm. 398.

(f) *Rex v. Justices of Worcestershire*, 2 Barn. & Ald. 228.

(g) 2 B. & Ald. 228.

justices. The party or parties convening the session issue a precept to the high constable, who thereupon does what is required of him.

This is not a Court of record, and therefore the Sheriff is not obliged to attend upon it. Not a Court of record.

Thirdly, The general sessions (a term which contains under it the general *quarter sessions*) is a meeting of two or more magistrates, one of whom must be of the *quorum*, for the execution of any general business that may come within the scope of the authority given them by their commission of the peace and by statutes. General sessions.

Sessions are general or special, *with reference to the object of their meeting*—whether convened for particular or general business.

The Courts of general and general-quarter sessions of the peace are Courts of record, and upon these, for the same reason, the Sheriff must attend, either in person or by deputy, to return the precept and to take charge of prisoners, and to serve the Court otherwise as he hath in charge by the *mandamus* that is mentioned in the commission of the peace, in default of attendance the justices may fine or amerce him; if they do not insist upon his attendance, &c. the omission is merely from courtesy and not from want of authority, for they have in like matters the same powers that judges of assize have, and for the same reasons, as appears by the case of the Sheriff of Brecon (*h*), who was fined 100*l*. He is also punishable by them for any default in executing their writs or precepts, for being an officer of that Court, he is of course amenable to it. Court of Record.

These sessions are convened in the following manner—any two justices within the jurisdiction (one being of the *quorum*) or the *custos rotulorum* and one justice direct the following precept to the Sheriff:—

Precept to Summon Sessions of the Peace.

Westmoreland, } We, John Hill, of _____, and W. Crackenthorp, of
to wit. } _____, justices of our sovereign lady the Queen, assigned
to keep the peace in the county aforesaid, and also to hear and determine
divers felonies, trespasses and other misdemeanors committed in the said
county, and one of us of the *quorum*, to the Sheriff of the same county,
greeting: on the behalf of our said sovereign lady the Queen, we command

(*h*) 8 Term Rep. 615; see also 2 Hawk. P. C. 222; Dalt. 372.

you, that you omit not, by reason of any liberty in your county, but that you enter therein, and that you cause to come before us, or others, justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, on the day of now next ensuing, at the hour of ten in the forenoon of the same day at *A.*, in the said county; twenty-four (i) good and lawful men of the body of the county aforesaid, then and there to inquire, present, do and perform all and singular such things, which on the behalf of our said sovereign lady the Queen shall be enjoined them; also that you make known to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties (k), within the county aforesaid, that they be then there to do and fulfil those things which by reason of their offices shall be to be done; moreover, that you cause to be proclaimed through the said county, in proper places, the aforesaid sessions of the peace to be held at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office: and have you then there as well the names of the jurors, coroners, keepers of gaols and houses of correction, high constables, and bailiffs aforesaid, as also this precept. Given under our seals at *A.* in the county aforesaid, the day of , in the year of the reign of, &c. (l).

Return thereto.

The execution of this precept appears in certain panels hereunto annexed. I further certify that I have given notice to all coroners, keepers of gaols and houses of correction, high constables and bailiffs of liberties within my county, to be and appear at the time and place within mentioned, to do and perform, &c. and have caused to be proclaimed through my county, in proper places, the sessions within mentioned.

The answer of Henry Earl of Thanet, High Sheriff.

Then on a piece of parchment write the names of the jurors (*ut ante*, p. 221,) thus:—

The names of the jurors to inquire.

The names of the jurors to try.

Coroners, keepers of gaols, &c.

Precept,
contents of.

Every precept to be issued for the return of jurors before
 * * * * * *Courts of sessions of the peace in England* * * *
 and Wales, shall in like manner direct the Sheriff to return a
 competent number of good and lawful men of the body of his
 county, qualified according to law, and shall not require the

(i) 6 Geo. 4, c. 50; as to their qualification, *post*, 237.

(k) 27 Hen. 8, c. 15.

(l) The justices out of session, as well as from their sessions, may in any case issue their precepts, &c. to the Sheriff, and he must execute the same; *Dalt.* 373. Without such precept to the Sheriff no one is bound to

attend, but if parties do attend, and the business is regularly transacted, the proceedings are valid; 2 *Ld. Raym.* 1238. The precept ought to bear *teste* fifteen days before the return, and ought to be delivered to the Sheriff forthwith, that he may have sufficient time to proclaim the sessions and to give the proper notices; 2 *Hawk.* 41.

same to be returned from any hundred or hundreds, or from any particular venue within the county, and that the want of hundredors shall be no cause of challenge; any law, custom or usage to the contrary notwithstanding (*m*).

The qualification by estate of persons liable to serve on *grand* juries and *petty* juries in Courts of sessions of the peace, is the same as the qualification of persons liable to serve on juries in Courts of nisi prius, &c. (*n*); and the Sheriff must return the names of men contained in the jurors' book for the then current year or for the preceding year, as the case may be (*o*).

Qualifica-
tion.

When the Sheriff hath received the precept, he must direct several warrants to the several bailiffs of liberties, &c. containing in them the *substance* of the precept, to summon them to appear at the sessions, &c.

To grant
precepts for
summoning
sessions.

SECTION III.

JURIES.

Whether in *civil* matters trial by jury as at present constituted in this country, is the fittest tribunal to determine differences depending upon the most refined subtleties of a lengthy record,—add to this, the necessity of an unanimous verdict upon issues not unfrequently inconsistent with each other,—we presume not to consider, but confine our observations to the mode of panneling jurors and other matters falling immediately within the High Sheriff's duties, as an officer of the several Courts of justice where jurors must attend for the administration of justice.

When parties are at issue and other necessary formulæ preparatory to the trial are complied with, a jury is to be summoned to try the issues of fact raised on the record; for this purpose two writs are issued, namely, a *venire facias* and a *distingas* in the Queen's Bench and Exchequer, a *venire facias* and *habeas corpora juratorum* in the Common Pleas, each directed to the Sheriff, coroner, or elizors, (as the case may be). The former commands him to return twelve good and lawful men of the

When jury
is sum-
moned.
Writs
whereby a
jury is sum-
moned.

(*m*) 6 Geo. 4, c. 50, s. 13.

(*n*) *Ibid.* s. 1.

(*o*) *Ibid.* s. 14.

body of his county qualified according to law, not as formerly hundredors.

Panel. On the return of the writs a *panel of not less than forty-eight* jurors, with the names alphabetically arranged, together with their places of abode and additions must be annexed to each—it is too frequently the practice to annex a panel only to the *venire*, but if not annexed to the *distringas* or *hab. cor. jur.*, it is error (b). *Note*, however in the two latter writs it is not requisite to insert the *names* of the jurors contained in such panel, but it suffices to insert in the mandatory part of such writs respectively these words, "*the bodies of the several persons named in the panel hereunto annexed*" (c), or words of like effect.

Names need
not appear
in writ.

Venire.

Victoria, &c. to the Sheriff [or "coroner"] of , [or "to and , elisors appointed in this behalf"], greeting: we command you that you cause to come before us [in C. P. "before our justice," in the E. P. "before our barons"] at Westminster forthwith [or "on, &c."] twelve good and lawful men of the body of your county, qualified according to law, by whom the truth of the matter may be better known, and who are in no wise of kin either to A. B. the plaintiff, or C. D. the defendant, to make a certain jury of the country between the parties aforesaid, in an action of *debt*, because as well the said A. B. as the said C. D. have put themselves upon the country; and have there then the names of the jurors and this writ. Witness, &c.

Venire under Issues of Law and Fact.

Victoria, &c. *ut ante*, as well to try the issue [or "issues"] joined between the said A. B. and C. D., to be tried by the country in an action *on promises*, as to inquire what damages the said A. B. hath sustained on occasion of the premises whereof the said parties have put themselves upon the judgment of the Court, if judgment thereupon shall be given for the plaintiff: and have there then the names of the jurors and this writ. Witness, &c.

Venire where one pleads and another suffers Judgment by Default.

Victoria, &c. *ut supra*, as well to try the issue [or "issues"] joined between the said A. B. and C. D., in an action *on promises*, as to inquire against the said R. T. what damages the said A. B. hath sustained as well by reason of the not performing of certain promises as for his costs and charges by him about his suits expended; whereupon it hath been considered that the said A. B. ought to recover his damages against the said R. T.: and have there then the names of the jurors and this writ. Witness, &c.

Return indorsed thereon.

The execution of this writ appears in a certain panel hereunto annexed.
The answer of G. A. Esq. High Sheriff.

(b) *Rogers v. Smith*, 1 Adol. & E. 772; 3 Nev. & M. 772, S. C. (c) 3 Geo. 2, c. 25.

Panel of Jurors annexed to Venire.

WESTMORELAND SPRING ASSIZES.

Names of Jurors to try the Issues joined.

- | | | | |
|--|---------|---|------------------|
| | Between | { | A. B. Plaintiff. |
| | | | and |
| | | { | C. D. Defendant. |
1. John Bellassys, of , Yeoman.
 2. George Pallister, of , Farmer.
 &c. &c.
 48. George Simpson, of , Shoemaker.
 Henry Earl of Thanet, High Sheriff.

It has been said that the writ of *venire* is used merely for the purpose of having it allowed in costs; if so the sooner it is abolished the better: but this assertion with regard to it is not correct; it is a process without which the Sheriff would have no authority to summon the jurymen at all, to use the words of Lord Denman, "the 21 Jac. 1, c. 13, does not cure the want of a *venire* or *distringas*." Besides the statutes of 6 Geo. 4, c. 50, s. 13, and 3 & 4 Will. 4, c. 67, s. 2, expressly require that writ as well as the *distringas* or *hab. cor. jur.*

If the Sheriff be not an indifferent person, as if he be a party in the suit, or be related by blood or affinity to either of the parties, the writs must be directed to the coroners; if any exception lies to *coroners*, they must be directed to two clerks of the Court, or two persons of the county named by the Court, and sworn; and these two persons, called *elisors* or electors, shall indifferently name the jury, and their return is final, no challenge being allowed to their array; Fort. de Laud, Ll. c. 25; Co. Litt. 158; 3 Comm. c. 23.

In its direction as well as in substance it must accord with the award of it on the roll; thus, if the award on the roll be to the Sheriff, or coroner, or *elisors*, the writ must accord therewith; again, if the award be general, the writ must be general; if special, the writ must be so likewise; as to try some issues of fact and assess damages upon issues of law, or to try issues as to defendants who have pleaded, and to assess damages against others who have suffered judgment by default (*d*).

It may, except in trials at bar, be *tested* on the day on which

(*d*) Archb. 307, 4th edit.

Venire, use of.

When Sheriff is not indifferent.

Writ must accord with the award on the roll.

Teste and return.

it is issued, and be made returnable *forthwith* (e); but as to the return it seems a particular day must be named (f); in trials at bar it can be tested in *term* only.

Distringas Juratores.

Victoria, &c. To the Sheriff of W. greeting: we command you that you distrain the several persons named in the panel hereunto annexed [*if a special jury say, G. P. of* , and *J. B. of* ,] jurors summoned in our Court before us, between *A. B.*, plaintiff, and *C. D.*, defendant, by all their chattels in your bailiwick, so that neither they nor any one of them lay hands on the same, until you shall have another command from us in that behalf; and that you answer to us for the issues of the same, so that you have their bodies before us at Westminster on, &c. [*the first day of the term next after the trial at Nisi Prius,*] or before our justices assigned to take the assizes in your county, if they shall first come on, &c. [*the commission day,*] at *A.* in your said county, [*if in London,* "before our Chief Justice Thomas Lord Denman, if he shall first come on, &c. at, &c."] according to the form of the statute in such case made and provided, to make a certain jury between the said parties in an action of debt; and have there then the names of the jurors and this writ. Witness, &c.

Return indorsed.

The execution of this writ appears in a certain schedule hereunto annexed.
The answer of Henry Earl of Thanet, High Sheriff.

Panel annexed.

WESTMORELAND SPRING ASSIZES.

Names of Jurors to try the Issues joined.

	Between	{ <i>A. B.</i> plaintiff. and <i>C. D.</i> defendant.
1. John Bellasys, of		, Yeoman.
2. George Pallister, of		, Farmer.
&c. &c.		
48. George Simpson, of		, Shoemaker.
	Henry Earl of Thanet, High Sheriff.	

Habeas Cor. Jur.

Victoria, &c. To the Sheriff of W. greeting: we command you that you have before our justices at Westminster on, &c. [*ut supra,*] the bodies of the several persons named in the panel hereunto annexed, [*if a special jury ut supra,*] jurors summoned in our Court before our justices at Westminster between *A. B.* the plaintiff, and *C. D.* defendant, in an action of debt; and have there then the names of the jurors and this writ. Witness, &c.

Return indorsed.

The execution of this writ appears in a certain panel hereunto annexed.
The answer of Henry Earl of Thanet, High Sheriff.

Panel annexed.

[Here copy Panel above.]

The *distringas* and *hab. cor. jur.* must accord with the *venire* in direction and in substance ; and are tested on the return day of the *venire*, and in causes at *Nisi Prius* may be returnable on the first day of the term after the trial, or they *may be tested* in term or vacation on a day subsequent to the teste of the writ of *venire* (g). In trials at bar they are returnable on the day on which the trial is to be had.

Must accord with *venire*.

Tests and return.

In practice both writs are issued at the same time (h) ; and in all cases by the plaintiff, (except in *replevin* or where the defendant proceeds to trial by proviso,) even in cases where the defendant has moved for a special jury ; in town causes where the blank forms are filled up and sealed, (for they do not require signing in the Queen's Bench or Exchequer, only in the Common Pleas) ; in *Middlesex* the *distringas* or *habeas* is taken to the office of the Under-sheriff in Red Lion Square, who returns it ;—in London to the Secondaries office in Coleman Street and by him returned in like manner ; and no use is made of the *venire* ; such is the practice, but it would seem from the case of *Rogers v. Smith* (i), that a return of the *venire* as well as either of the other two is indispensably necessary that a panel must be annexed to each. In country causes the *venire* is returned by the Sheriff's deputy in town, and the *distringas* by the Under-sheriff in the country ; and when returned are annexed together with the panels to the *Nisi Prius* record.

By whom issued.

In town causes how issued.

A panel must be annexed to each.

Country causes.

If the trial stands over from one sitting to another, the *distringas* or *hab. corp. jur.* must be *resealed*, and if it be necessary to answer the teste or return, or the *nisi prius* clause, the same may be done by the order of a judge obtained on an *ex parte* application.

Resealing. Amending, &c.

If the cause be made a *remanet* the jurata must be altered and a *venire de novo*, &c. issued ; if there has been a view, however, an alias *distringas* or *hab. corp. jur.* must be issued, and in the event of a new trial the same.

When cause is made a remanet.

In *replevin* if a plaintiff or defendant, having sued out his jury process with a clause of *nisi prius*, do not proceed to trial, he may (excepting in cases where a view is directed) have a new *venire* and proceed to trial, just as if no former *venire* had issued (k).

In replevin.

A new *venire*.

(g) 3 & 4 Will. 4, c. 67, s. 2.

(h) 1 Arch. 306.

(i) 1 Ad. & E. 782.

(k) 6 Geo. 4, c. 50, s. 50.

In trials by
proviso.

So where the defendant takes the cause down *by proviso* when plaintiff does not go to trial on the first venire sued out.

In trials at
bar.

In trials at bar an alias or pluries distringas, or hab. corp., must be sued out, for the statute does not apply; and the alias or pluries is not to issue until after the former writ and panel have been delivered to the Master, in order that the issues forfeited may be estreated (*l*).

When the
writs must
be delivered
to the
Sheriff.

In the case
of common
jurors.

In the case
of special
jurors.

In London
and Mid-
dlesex.

The several writs above alluded to must be taken to the proper offices in sufficient time to enable the Sheriff to summon the jury in proper time, that is, *ten days* in the case of common jurors, and as to special jurors *three days* at least before commission day at the assizes (except jurors for London and Middlesex, to whom the statute does not apply in this respect (*m*)); this should be more strictly attended to, for judges are constantly prevented from trying causes at the assizes solely in consequence of the irregularity of the parties in issuing the jury process too late.

Qualifica-
tion of
jurors.

It becomes next of importance to inquire into the nature and extent of the qualification of jurors, common and special, and by what medium their names come into the Sheriff's office; but previously to entering into the details of this division of our matter a few observations respecting the grand jury may not, perhaps, be deemed out of place.

Grand jury.

Speaking of the *grand jury*, Sir William Blackstone says, "the Sheriff of every county is bound to return to every session of the peace, and every commissioner of *oyer* and *terminer* and of general gaol delivery, twenty-four good and lawful men of the county, some out of every hundred, to inquire, present, do, and execute all those things which on the part of our lord the king shall then and there be commanded them. They ought to be *freeholders*, but to what amount is uncertain: which seems to be *casus omissus*, and as proper to be supplied by the legislature as the qualifications of the petit jury; which were formerly equally vague and uncertain, but are now settled by various acts of parliament. However, they are usually gentlemen of the best figure in the county (*n*)."¹ It is laid down, it will be observed, that grand jurors ought to be *freeholders*, but a more

Grand
jurors need

(*l*) R. H. 15 Car. 2, c. 2.

(*m*) *Chalton v. Burfit*, 1 M. & S. 450.

(*n*) 4 Bl. Com. 299.

recent authority (1810, a case submitted to the judges by Mr. Justice Lawrence, where the doctrine of Hale, Blackstone, and Hawkins are referred to,) has declared *that they need not be freeholders (o)*: and the law may be stated briefly thus—*that grand jurors at the assizes require no qualification by estate*. They must, however, be of the Queen's liege people, returned by Sheriffs or bailiffs of franchises, not outlaws (*p*); and if any one be outlawed the indictment is *void* though twenty others be upon the inquest (*q*). The main feature, indeed the only one needing observation, is that the bill must be found *by a majority* of them (*r*), *and that twelve must be unanimous*; for which reason it is that the number of persons on a grand jury cannot exceed twenty-three, nor be less than twelve (*s*).

not be freeholders.

Nor require any qualification by estate.

But must be personally qualified.

Bill found by a majority.

Twelve must be unanimous.

The grand jurors at the sessions of the peace must be qualified according to the statute of 6 Geo. 4, c. 50, s. 1.

Grand jurors at the sessions.

The Sheriff of Yorkshire must summon forty-eight on the grand jury at the assizes, freeholders and copyholders (each person having 80*l.* land per annum), and forty at the sessions.

The qualification of common jurors as regards *England (t)* is this:—

Qualification of common jurors in England.

“ Every man (except as hereinafter excepted) between the ages of twenty-one and sixty, residing in any county in England, who shall have in his own name, or in trust for him within the same county, 10*l.* by the year above reprises in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements and rents taken together in fee simple, fee tail, or for the life of himself or some other person, or who shall have within the same county 20*l.* by the year above reprises in lands or tenements held by lease or leases for the absolute term of twenty-one years or some longer term, or for any term of years determinable on any life or lives, or who being a householder shall be rated or assessed to the poor-rate or to the inhabited house duty in Middlesex on a value

(o) *Anon. Russel & Ryan's Rep.* 177.

(p) 11 Hen. 4, c. 9.

(q) 2 Hale, 202; Com. Dig. Indict. A.

(r) 2 Hale, 161.

(s) *Robinson v. Bland*, 2 Burr. Rep. 1088.

(t) 7 & 8 Will. 3, c. 32, s. 8.

of not less than 30*l.*, or in any other county on a value of not less than 20*l.*, or who shall occupy a house containing not less than fifteen windows, shall be qualified to serve as a juror."

In Wales. *For Wales* the qualification differs in degree, not in kind ; " the being qualified to the extent of *three fifths* of any of the foregoing qualifications," is enough to make a person liable to serve as a juror.

In liberties, cities, and boroughs. The qualification of jurors in liberties, cities, and boroughs, remains as before the passing of the 6 Geo. 4.

In London. *In London* the qualification requisite is that a person be a householder, or the occupier of a shop, warehouse, counting-house, chambers, or office for the purpose of commerce within the said city, and have lands, tenements, or personal estate of the value of 100*l.*

Qualification on writs of inquiry. By sect. 52, the same qualification is required on writs of inquiry, executed in London or in any county in England or Wales, as in trials at nisi prius ; but if executed in any liberty, franchise, city, borough, or town corporate, not being a county, or in any city, borough or town, being a county of itself, the qualification is not affected by the act.

On a jury *de medietate lingue*. *In a jury de medietate lingue* (which is allowed only in cases of felony and misdemeanor) the aliens need no qualification by estate (u).

Permanent exemptions. Thus much as to the qualification : we next proceed to the exemptions. The persons exempt from serving on juries are : peers, judges of the superior courts, clergymen, priests of the Roman Catholic faith, who have duly taken and subscribed the oaths and declarations required by law ; Protestant Dissenting preachers, whose place of meeting is duly registered, and who follow no secular occupation except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law ; serjeants and barristers in actual practice, all members of the Society of Doctors of Law, and advocates of the civil law in actual practice ; all attorneys, solicitors, and proctors, in actual

(u) Sect. 47.

practice; all officers of any court of law or equity, or of ecclesiastical or admiralty jurisdiction, actually employed as such; coroners, gaolers, and keepers of houses of correction; members of the College of Physicians in actual practice; surgeons, being members of the Royal Colleges of Surgeons of either London, Edinburgh, or Dublin, in actual practice; members of Apothecaries' Hall, in actual practice; officers of the army and navy on full pay; pilots licensed by the Trinity House of Deptford, Strand, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed by the Lord Warden of the Cinque Ports, or under any act of parliament or charter for the regulation of pilots in any other port; all the household servants of her Majesty; all officers of customs and excise; persons in the service of the Post Office (*x*); Sheriffs' officers, high constables and parish clerks; likewise all persons (*y*), who by prescription, charter, grant, or writ, were so before the passing of the act, still remain and are exempt from serving upon juries.

By sect. 49 the inhabitants of the city and liberty of Westminster are exempted from serving on juries at the sessions of the peace for Middlesex.

In *Middlesex* no person shall be returned to serve on a jury at nisi prius who has served as a juror in either of the two preceding terms or vacations, having the Sheriff's certificate of having so served; and no person shall be returned to serve at the assizes who has before served in Yorkshire within four years, in Wales, Herefordshire, Cambridgeshire, Huntingdonshire, or Rutlandshire, within one year, or in any other county within two years, having the Sheriff's certificate of having so served; which certificate the Sheriff or Under-sheriff, on application to him, is bound to give to every *common* juror on payment of one shilling. Temporary exemptions.

One who is not a *natural* born subject (except as a juror *de medietate lingue*) is absolutely disqualified from serving on juries Disqualifications.

(*x*) *Ex parte Atkinson*, 10 Bing. 399. (*y*) *Res v. Pugh*, 1 Dougl. 188.

or inquests, and persons under outlawry or excommunication, or persons attainted of any treason or felony, or convicted of any crime that is infamous, unless they have obtained a free pardon, are also absolutely disqualified from serving on juries or inquests in any Court or on any occasion whatsoever (z).

By sect. 48 no justice is to serve as a juror at any sessions for the jurisdiction of which he is a justice.

Mode of obtaining the juror's book.

The mode by which the jurors' names, additions, &c. are brought within the Sheriff's cognizance, is this: the clerk of the peace issues his warrant to the high constable, commanding the latter to issue his precept to the churchwardens and overseers of the several parishes, and to the overseers of the several townships, requiring them to prepare before the first day of September then next ensuing a true list of all men residing within their respective parishes and townships, and liable to serve on juries; *forthwith* after receipt of the high constable's precept, &c. the churchwardens prepare an alphabetical list of all persons liable to serve, and affix the same during the three first Sundays in the month of September on the principal door of every church, chapel and other public place of religious worship within their respective parishes or townships, having first subjoined a notice that objections will be heard by the justices of the peace at a time and place to be mentioned in such notice, and signed by them. Petty sessions are to be held the last week in September, when the lists must be produced, considered, reformed, and allowed; after allowance by the petty sessions, the high constable receives the lists so allowed, and delivers the same to the Court of Quarter Sessions next following, on the first day of its sitting, attesting on oath his receipt of every such list from the petty sessions, and that no alteration has been made in them since his receipt thereof. These lists are thereupon recorded by the clerk of the peace, and by him copied into a book in alphabetical order, which book must be delivered to the Sheriff or his Under-sheriff within six weeks next after the close of such sessions. This book is called the "*Jurors' Book*," which is used for one year only, beginning on the first of January, after it comes into the hands of the Sheriff or Under-sheriff as aforesaid: whether the writ as directed to the Sheriff, coroner, elisor, or other minister, the jurors must

Jurors' book.

be returned from this book: provided, however, there be no jurors' book in existence for the current year, they may be returned from the book of the year preceding.

In every county in *England* (except the counties palatine (a), and also except in causes to be tried at bar or by a special jury) no less than forty-eight, nor more than seventy-two must appear in the panel annexed to the jury process: by order of the judges, however, the number may be increased to 144, and in places where the session is of long duration, the sheriff must, a reasonable time before the commission day, apply to them for leave to summon *two sets* of seventy-two, or whatever number below 144 he may think sufficient, the order will be made: and in his summons he must specify on which set the juror is, the first or second, and at what time the attendance of such juror will be required.

Number to be returned on panel.

May be increased by order of a judge.

In sets.

The mode of summoning jurors is pointed out by the statute, and must be strictly complied with; it is by *showing the summons* to the person, or in case of absence from the usual place of abode, by leaving with some person then inhabiting a *note in writing*, under the hand of the Sheriff or other proper officer, containing the *substance* of the summons.

Mode of summoning jurors.

Special jurors are to be summoned in like manner.

Special jurors how summoned.

The jurors for London or Middlesex are to be summoned as before the statute (b).

If any officer take money to excuse persons from serving, or summon any other but those named in his warrant, signed and directed to him, or summon any juror less than the statutory number of days before the day of attendance, the Court is empowered to set such fine upon the officer offending as it shall think fit; in a case before the recent statute, a summoning officer was fined 200*l.* for receiving money to excuse persons from serving on juries, and for too often summoning those who refused to pay (c).

Officers offending.

(a) There is no material distinction in the cases of the counties palatine or Wales, indeed the only distinction seems to be in the making a *return* to

the Court of the jurors summoned, &c. Sects. 17, 18.

(b) *Ante*, 238.

(c) *Rex v. Whitaker*, Cowp. Rep. 752.

A list must be kept in Under-sheriff's office.

A list of all the jurors summoned must be kept in the office of the Under-sheriff or deputy for seven days at least before the sitting, for inspection of parties or their attorneys, for which no fee can be demanded.

Sheriff indemnified in returns.

(See 7 & 8 Will. 3, c. 32, s. 6.)

Officers unduly returning jurors, &c. (See 3 Geo. 2, c. 25, s. 3.)

Penalty.

Sheriff, &c.

to register names of jurors who have served; (see 3 G. 2, c. 25, s. 5,) and give certificates.

Fee.

" 39. And every Sheriff and other minister, to whom the return of juries shall belong, shall be and is hereby indemnified for impannelling and returning any man named in the jurors' book, although he may not be qualified or liable to serve on juries; and that if any Sheriff or other such minister shall wilfully impanel and return any man to serve on any jury before any of the Courts in England or Wales hereinbefore mentioned (except on the grand jury at any assizes or great sessions,) such man's name not being inserted in the jurors' book for the current year, or if such book has not been delivered, then in the jurors' book last delivered, or if any clerk of assize, associate, prothonotary, clerk of the peace or other officer of any of the Courts aforesaid, shall wilfully record the appearance of any man so summoned and returned, who did not really appear, in every such case the Court shall and may, upon examination in a summary way, set such fine upon such Sheriff, minister, clerk of assize, associate, prothonotary, clerk of the peace or other officer offending, as the Court shall think meet.

" 40. And be it further enacted, that the Sheriff or his Under-sheriff, shall from time to time register alphabetically, in proper columns, to be prepared in the jurors' book for that purpose, the services of such men as shall be summoned and shall attend to serve as jurors on trials, before any Court of assize or nisi prius, oyer and terminer or gaol delivery, or in the said Courts of the said counties palatine or great sessions, and also the times of their services; and every man so summoned, and having duly attended or served until discharged by the Court, shall (upon application by him made to such Sheriff or Under-sheriff, before he shall depart from the place of trial,) receive a certificate testifying such his service, which certificate the Sheriff or Under-sheriff is hereby required to give on payment of one shilling: provided always, that nothing herein contained shall extend to any grand jurors or special jurors."

IN CRIMINAL MATTERS.

Jury in criminal matters.

What has been said of juries in civil cases will greatly facilitate and shorten the present remarks on them in criminal cases.

How returned.

The 20th section of the 6 Geo. 4, declares that juries in criminal Courts are to be returned as heretofore (*d*), "save and except that the jurors shall be returned from the *body of the county* and not from the hundred or hundreds, or from any particular venue within the county, as shall be *qualified according to this act.*"

Qualification.

(*d*) 3 Hen. 8, c. 12; see also 2 Hale's P. C. 264; 2 Hawk. P. C. c. 40.

If the proceedings are before the Court of Queen's Bench, In Queen's time is allowed between the arraignment and trial for a jury to Bench. be impannelled by writ of *venire facias* to the Sheriff as in civil causes.

Before commissioners of *oyer and terminer* and gaol delivery, At assizes. the Sheriff, by virtue of a general precept directed to him before-hand, returns to the Court a panel of forty-eight jurors Number re- to try all felons that may be called upon their trial at that ses- turned. sion (e); as their *personal* qualification as well as their qualifi- cation *by estate* is the same as that of jurors in civil causes, the Sheriff should take them from the jurors' book.

The judge of assize, &c. may direct same panel to serve in- Same panel may serve in discriminately on the criminal and civil side, and two sets as criminal and civil before observed as to civil cases (f). causes.

When a person is indicted for high treason or misprision of In what treason in any Court other than the Court of Queen's Bench, a cases a per- list of the petit jury must be delivered to him ten days before son indicted of high trea- the arraignment, in the presence of two or more credible wit- son is entit- nesses; if in the Queen's Bench, the same may be delivered to led to a list of the jury. the party indicted at any time after the arraignment, so as the If indicted for high same be delivered ten days before the day of trial, but he is not treason in the Queen's entitled to this panel, if his crime relates to her Majesty's life or Bench. person, or the counterfeiting her coin, the great seal or privy seal, her sign manual or privy signet (g).

By the laws of this country an alien, in cases of felony and Jury de me- misdemeanor, has the right to be tried by a jury *de medietate dictate lin-* *linguæ*, that is, one-half of the jury of aliens, (foreigners *gene-* *guæ*. rally, and not exclusively the prisoner's countrymen,) if so many there be in the town or place where the trial is had, and if not, then so many aliens as shall be found in the same town or place, if any, which, on the prayer of every alien so indicted, the Sheriff or other proper minister shall, by command of the Court, re- turn; it has been before stated, that no qualification by estate is No qualifi- required for a juror of this kind, nevertheless he may be chal- cation by estate, but

(e) 4 Comm. c. 27.

(f) S. 22.

(g) S. 21.

challenge.
able for
other
causes.

lenged for any other cause in like manner as if he were taken from the common jurors' book (*h*).

Alien tales.

If there be a default of an alien, it must be supplied by an alien tales, for the words are relative; but if tried by Englishmen only, the judgment is not erroneous (*i*).

SPECIAL JURORS.

Special
jurors' list.

It may be that a party or the parties to a suit wish to submit to, or the case not unfrequently is of itself such as absolutely to require, a higher intellectual tribunal than that taken indiscriminately from the jurors' book; for this purpose and for such cases a "*special jurors' list*" is to be made out, which for the counties in England and Wales and for London is done in this manner (*k*):—

How made
out.

Within ten days after the receipt of the jurors' book for the current year, the names of all men described therein as *esquires* or as persons of higher degree, or as *bankers* or *merchants*, must be taken out by the Sheriff or Under-sheriff or Secondary, in alphabetical order, together with their respective places of abode and additions, in a separate list, to be subjoined to the jurors' book, and for the purpose of balloting, these names must be numbered 1, 2, 3, and so on; and the numbers written on separate cards or pieces of parchment of equal size and secured in a drawer for the purposes hereinafter mentioned.

A special
jury may be
had in criminal
as well as in
civil cases.
Or in civil
cases by
consent.
The mode
of obtaining
a special
jury.

The superior Courts have the power of *ordering* special juries to be struck in any case whatsoever, whether civil or criminal, or on any penal statute, excepting only indictments for treason or felony (*l*); or in civil causes such a jury may be obtained *by consent* of the parties.

Officer of
Court to ap-
point time

The mode of obtaining or striking a special jury is declared and regulated by the following sections of the act:—

"32. And be it further enacted, that whenever any of the Courts or judges above mentioned shall order a special jury to be struck before the

(*h*) S. 47.

(*i*) *Cesar v. Corsini*, Cro. Eliz.
306; Poph. 35; *Denbaud's ca.* 10 Co.
104; Dyer, 27 b.

(*k*) S. 31.

(*l*) S. 30.

proper officer of such Court, such officer shall appoint a time and place for the nomination of such special jury; and a copy of the rule of Court, and of such officer's appointment, shall be served on the Under-sheriff of the county in England or Wales in which the trial is to be had, or on the Secondary of the city of London, if the trial is to be had there, and also on all the parties who have usually been served with the same respectively, in the accustomed manner; and the said officer, at the time and place appointed, being attended by such Under-sheriff or Secondary, or his agent, who are hereby respectively required to bring with them the jurors' book and such special jurors' list, and all the numbers so written on distinct pieces of parchment or card as aforesaid, shall, in the presence of all the parties in any of the cases aforesaid, and of their attorneys (if they respectively choose to attend, or if the said parties or their attorneys, all or any of them, do not attend, then in their absence,) put all the said numbers into a box, to be by him provided for that purpose, and after having shaken them together shall draw out of the said box forty-eight of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the special jurors' list, and read aloud the name designated by such number; and if at the time of so reading any name, either party or his attorney shall object that the man whose name shall have been so referred to is in any manner incapacitated from serving on the said jury, and shall also then and there prove the same to the satisfaction of the said officer, such name shall be set aside, and the said officer shall instead thereof draw out of the said box another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall in every such case be resorted to, according to the mode of proceeding hereinbefore described, for the purpose of supplying names in the places of those set aside, until the whole number of forty-eight names not liable to be set aside shall be completed; and if in any case it shall so happen that the whole number of forty-eight names cannot be obtained from the special jurors' list, in such case the said officer shall fairly and indifferently take, according to the mode of nomination heretofore pursued in nominating special juries, such a number of names from the general jurors' book, in addition to those already taken from the special jurors' list, as shall be required to make up the full number of forty-eight names, all and every of which forty-eight names shall in such case be equally deemed and taken to be those of special jurors; and the said officer shall afterwards make out for each party a list of the forty-eight names, together with their respective places of abode and additions, and after having made out such list, shall return all the numbers so drawn out, together with all the numbers remaining undrawn, to such Under-sheriff or secondary or his agent, to be by such Under-sheriff or secondary safely and securely kept for future use; and all the subsequent proceedings for reducing the said list, and all other matters whatsoever relating to special juries, shall remain and continue in force as heretofore, except where the same or any part thereof is expressly altered by this act; and all the fees heretofore payable on the striking of special juries shall continue to be paid in the accustomed manner.

" 33. Provided always, and be it further enacted, that nothing herein contained shall be construed to prevent the parties in any cause, or their attorneys, from consenting to have a special jury nominated according to the mode used and accustomed before the passing of this act, and upon a consent to that effect, signed by each party or his attorney, being communicated to the proper officer, he is hereby authorized and required to

and place for nominating special jury.

Under-sheriff or his agent to attend officer with special jurors' list, &c.

How officer to proceed thereon.

Former matters, except as hereby altered, and fees, to remain.

The parties may, by consent, have special jury struck as heretofore.

The same special jury may, by consent, try any number of causes. Court may discharge special juror having served once.

nominate a special jury for the trial of every such cause, according to the mode used and accustomed before the passing of this act: provided also, that nothing herein contained shall be construed to prevent the same special jury, however nominated, from trying any number of causes, so as the parties in every such cause, or their attorneys, shall have signified their assent in writing to the nomination of such special jury for the trial of their respective causes: provided always, that it shall be lawful for the Court, if it shall so think fit, upon the application of any man who shall have served upon one or more special juries at any assizes or sessions of nisi prius, to discharge such man from serving upon any other special jury during the same assizes or sessions of nisi prius.

Costs of special jury. (See 24 Geo. 2, c. 18.) Judges' certificate.

" 34. And be it further enacted, that the person or party who shall apply for a special jury shall pay the fees for striking such jury, and all the expenses occasioned by the trial of the cause by the same, and shall not have any further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury; unless the judge before whom the cause is tried shall, immediately after the verdict, certify, under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury.

Fees to special jurors. (See 24 Geo. 2, c. 18.)

" 35. And be it further enacted, that no juror who shall serve upon any special jury shall be allowed or take for serving on any such jury more than such sum of money as the judge who tries the issue shall think just and reasonable, and which shall not exceed the sum of one pound one shilling, except in causes wherein a view is directed, and shall have been had by such juror.

Mode of striking special juries in any county of a city or town (except London) to remain as heretofore. (See 3 Geo. 2, c. 25, s. 17.)

" 36. Provided always, and be it further enacted, that where any special jury shall be ordered by any rule, in any of the Courts aforesaid, to be struck by the proper officer of such Court, in any cause arising in any county of a city or town, except the city of London, the Sheriff or Sheriffs thereof, or the Under-sheriff respectively, shall be commanded by such rule to bring or cause to be brought, before the proper officer of such Court, the books or lists of persons qualified to serve on juries within the same county of a city or town; and in every such case the jury shall be taken and struck out of such books or lists respectively, in the manner heretofore used and accustomed; any thing in this act to the contrary notwithstanding."

VIEW.

View.

It may be also that for the better understanding of the real matters in dispute between the parties in Court, and of the evidence bearing upon the issues on the record, that some of the jurors should themselves see, in other words, have a *view* of the place or premises, or of the mode or process of the manufactory in question.

Before the statute of 4 & 5 Anne, c. 16, s. 7, a *view* could not be obtained until the full jury were sworn, after which a juror was withdrawn, and the parties entered into a consent rule for a *view*; it is needless to dwell upon the delay and inconvenience of such a practice, or why the statute was passed; then followed

the 3 Geo. 3, c. 25, s. 14, which is now almost *verbatim* embodied in the recent enactment of 6 Geo. 4, the 23d section of which enacts, that “ in any case, either *civil* or *criminal*, or on any penal statute depending in any of the said Courts of record at Westminster, or in the counties palatine or great sessions in Wales, it shall appear to any of the respective Courts, or to any judge thereof in vacation, that it will be proper and necessary that some of the jurors who are to try the issues in such case, should have the view of the place in question, in order to their better understanding the evidence that may be given upon the trial of such issues; in every such case such Court, or any judge thereof in vacation, may order a rule to be drawn up containing the usual terms, and also requiring, if such Court or judge shall so think fit, the party applying for the view to deposit (*m*) in the hands of the Under-sheriff, a sum of money to be named in the rule for payment of the expenses of the view, and commanding special writs of *venire facias*, *distringas* or *habeas corpora*, to issue; by which the Sheriff, or other minister to whom the said writs shall be directed, shall be commanded to have *six or more* of the jurors named in such writs, or in the panels thereto annexed, (who shall be mutually consented to by the parties, or if they cannot agree, shall be nominated by the Sheriff or such other minister as aforesaid,) at the place in question some convenient time before the trial, who then and there shall have the place in question shown to them by two persons in the said writs named, to be appointed by the Court or judge, and the said Sheriff, or other minister who is to execute any such writ, shall, by a special return upon the same, *certify* that the view hath been had according to the command of the same, and shall specify the names of the viewers.” And by the next section it is provided that the viewers are to be *first* sworn on the jury at the trial, and then so many only shall be added to the viewers who shall appear as shall, after all defaulters and challenges allowed, make up a full jury of twelve (*n*).

(*m*) Distance from Under-sheriff's office not exceeding five miles:—

Common jury £10

Special do. 16

Exceeding five miles:—

Common jury £15

Special do. 21

And where the sum exceeds the ex-

penses of the view, it must be forthwith returned to the attorney of the party who obtained the view; if deficient, such deficiency must be forthwith paid by the attorney to the Under-sheriff; R. Trin. 7 Geo. 4.

(*n*) It is stated in Lee's Prac. Dict. 1370, that the rule may be obtained

No affidavit
now re-
quired.

Practical in-
structions.

The rule of Trin. Term, 7 Geo. 4, required an affidavit and leave of the Court or a judge in order to obtain a view; but the subsequent rule Hil. Term, 2 Will. 4, r. 63, orders, that "the rule for a view may, in all cases, be drawn up by the officer of the Court on the application of the party, *without affidavit or motion* for that purpose." Make out a præcipe of the rule for a view, also a memorandum of the name and place of abode of your own showers also of your opponent's showers, which may be obtained from the opposite attorney, also of time and place of meeting, on the production of them the master or his clerk of the Court will draw up the rule. If the opposite party will not name a shower, the master will, on an appointment obtained for that purpose, name one *ex parte*. A copy of the rule must then be served on the opposite attorney, and the original left at the Sheriff's office together with a list of the jury if special, and he will summon them, if common he will summon such as he may think fit.

Duties and
conduct of
showers.

The duties and conduct of the showers will be best explained by the following case of *Goodtitle d. Symons v. Clark (o)*.

"After the merits of the cause had been determined at the assizes by a special jury after a trial of twenty hours, defendant moved to set aside the verdict upon affidavit that plaintiff's shower at a view pursuant to a rule of Court previous to the trial, had misbehaved himself by telling the viewers this place is called Abehalls Yal, and this Conygree Hill, (which were not the places in question,) and saying, these cottages pay Mr. Symons fivepence or sixpence a year rent; defendant insisting that nothing more than the place in question, which was one single cottage, should have been shown to the viewers: upon hearing counsel on both sides the Court discharged the rule, being of opinion *that on a view the showers may show marks, boundaries, &c. to enlighten the viewers; and may say to them, these are the places which on the trial we shall adapt our evidence to; the jury could have no light from looking at the cottage only.*" The question to be tried was, whether it stood within Mr. Symon's

when inquiry is to be executed, as well as when trial is to be had at nisi prius; but in the absence of any reported authority, it is suggested, that by sections 23, 24, that it can only be

had where *issues* are subsequently to be tried by the viewers; both sections seem necessarily to imply a subsequent trial.

(o) Barnes' Notes, 457.

manor or not. Had an ancient man been produced to the viewers and he had acquainted them that he had known the place many years, and given account of the boundary, &c. this would have been improper, because it is giving evidence before the trial. *Belfield* for defendant; *Booth* and *Eyre* for plaintiff."

A view is not limited to locality, for Abbott, C. J. held that the mode or process of a manufactory might be shown (p).

Not limited to mere locality.

The Under-sheriff's duties on a view seem no where to be defined by text or any decided case; they seem to be simply those of an ordinary officer of the Court in charge of a jury, to prevent any improper interference of strangers, and to enable him to certify to the justices of assize that a view has been had.

Sheriff's duties on view.

TALES.

By the 35 Hen. 8. c. 6, s. 5, the *tales de circumstantibus* in civil suits was given, and extended by the 4 & 5 P. & M. c. 7, to prosecutions tried at *Nisi Prius*; the 7 & 8 Will. 3, c. 32, s. 3, and 3 Geo. 2, c. 25, pointed out the persons who were to be the tales, and by the 6 Geo. 4, c. 50, s. 37, "talesmen are to be such only as have been impannelled upon the common jury panel to serve at the same court, if a sufficient number of such men can be found;" sect. 37 enacts,

Default of jurors, a tales.

"Where a full jury shall not appear before any court of assize or nisi prius, or before any of the superior civil courts of the three counties palatine, or before any court of great sessions, or where, after appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, every such Court, upon request made for the King by any one thereto authorized or assigned by the Court, or on request made by the parties, plaintiff or demandant, defendant or tenant, or their respective attornies, in any action or suit, whether popular or private, shall command the Sheriff or other minister, to whom the making of the return shall belong, to name and appoint, as often as need shall require, so many of such other able men of the county then present as shall make up a full jury; and the Sheriff or other minister aforesaid shall, at such command of the Court, return such men duly qualified as shall be present or can be found to serve on such jury, and shall add and annex their names to the former panel, provided that where a special jury shall have been struck for the trial of any issue, the talesmen shall be such as shall be impannelled upon the common jury panel to serve at the same Court, if a sufficient number of such men can be found; and the King, by any one so authorized or assigned as aforesaid, and all and every the parties aforesaid, shall and may, in each of the cases aforesaid,

Proceedings in respect of tales de circumstantibus.

have their respective challenges to the jurors so added and annexed, and the Court shall proceed to the trial of every such issue with those jurors who were before impannelled, together with the talesmen so newly added and annexed, as if all the said jurors had been returned upon the writ or precept awarded to try the issue."

Alien tales. If an alien make default his place must be supplied by an *alien tales*, for there must be a *medietas* of aliens or none; if none, that is by Englishmen only, the judgment is not erroneous (*q*).

It is not necessary that the tales be selected out of persons *accidentally* present, but may be out of those whose presence the Sheriff or coroner has previously taken means to obtain (*r*).

Sheriff, &c.
to register
names of
jurors who
have served;
(see 3 G. 2,
c. 25, s. 5.)
and give
certificates.

" 40. And be it further enacted, that the Sheriff or his Under-sheriff, shall from time to time register, alphabetically, in proper columns, to be prepared in the jurors' book for that purpose, the services of such men as shall be summoned and shall attend to serve as jurors on trials, before any Court of assize or nisi prius, oyer and terminer, or gaol delivery, or in the said Courts of the said counties palatine or great sessions, and also the times of their services; and every man so summoned, and having duly attended or served until discharged by the Court shall (upon application by him made to such Sheriff or Under-sheriff, before he shall depart from the place of trial,) receive a certificate testifying such his service, which certificate the Sheriff or Under-sheriff is hereby required to give on payment of one shilling: provided always, that nothing herein contained shall extend to any grand jurors or special jurors.

Fee.

**Clerk of
peace to
make out a
list of ser-
vices at ses-
sions on
grand or
petty juries,
and trans-
mit to
sheriff.**

" 41. And be it further enacted, that the clerk of the peace, at every session of the peace to be holden for any county, riding, or division in England or Wales, shall make out a list of such men as shall be summoned and shall attend to serve on any grand jury or petty jury at such sessions, together with their respective places of abode and additions, and the date of their services, and shall within twenty days after the close of every such sessions, transmit such list to the Sheriff or Under-sheriff of the county, who is hereby required forthwith to register the names of the men included in such list in the proper columns of the jurors' book for that purpose, together with the date of their services; and every man so summoned, and having duly attended or served until discharged by the Court of Sessions, shall, upon application by him made to such clerk of the peace, before he shall depart from the place where the sessions are holden, receive a certificate, testifying such his service, which certificate the said clerk of the peace is hereby required to give, on payment of one shilling.

**Certificate
of service.
Fee.**

**Jurors not
to be sum-
moned
again with-
in certain**

" 42. And be it further enacted, that no man shall be returned as a juror to serve at any sessions of nisi prius or of gaol delivery, in the county of Middlesex, who has served as a juror at either of such sessions in the said county, in either of the two terms or vacations next immediately preceding, and has the Sheriff's certificate of having so served; and no man shall be returned as a juror to serve on trials before any Court of

(*q*) See *ante*, p. 244, and cases cited.

(*r*) *Rex v. Dolby*, 2 B. & Cr. 104; 3 D. & R. 311.

assize, nisi prius, oyer and terminer, or gaol delivery, or any of the said Courts of the three counties palatine, or of the said great sessions, who has served as a juror at any of such Courts within one year before, in Wales, or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or four years before in the county of York, or two years before in any other county, and has the Sheriff's certificate of having so served; and no man shall be returned to serve upon any grand jury or petty jury, at any sessions of the peace to be holden for any county, riding, or division in England or Wales, who has served as a juror at any such session within one year before, in Wales, or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or two years before in any other county, and has the certificate of the clerk of the peace of having so served; and if any Sheriff or other minister shall wilfully transgress in any of the cases aforesaid, the Court may and is hereby required on examination and proof of every such offence, in a summary way, to set such fine upon every such offender as the Court shall think meet: provided, that nothing herein contained shall extend to grand jurors at the assizes or great sessions, or to special jurors.

periods to assizes. (See 3 G. 2, c. 25, s. 4; 4 G. 2, c. 7.)

Nor to quarter sessions.

Officer offending.

Penalty.

Proviso.

"43. And be it further enacted, that no Sheriff, Under-sheriff, coroner, elisor, bailiff, or other officer or person whatsoever, shall, directly or indirectly, take or receive any money or other reward, or promise of money or reward, to excuse any man from serving or from being summoned to serve on juries, or under any such colour or pretence; and that no bailiff or other officer appointed by any Sheriff, Under-sheriff, coroner, or elisor, to summon juries, shall summon any man to serve thereon, other than those whose names are specified in a warrant or mandate, signed by such Sheriff, Under-sheriff, coroner, or elisor, and directed to such bailiff or other officer; and if any Sheriff, Under-sheriff, coroner, elisor, bailiff, or other officer, shall wilfully transgress in any of the cases aforesaid, or shall summon any juror, not being a special juror, less than ten days before the day on which he is to attend, or shall summon any special juror less than three days before the day on which he is to attend, except in the cases hereinbefore excepted, the Court of assize, nisi prius, oyer and terminer, gaol delivery, great sessions, or superior Court of the said counties palatine, or Court of sessions of the peace, within whose jurisdiction the offence shall have been committed, may and is hereby required, on examination and proof of such offence, in a summary way, to set such a fine upon every person so offending, as the Court shall think meet, according to the nature of the offence."

No money taken to excuse persons from serving. (See 3 G. 2, c. 25, s. 6.)

None to be summoned but those named in warrant.

Officer offending.

Penalty.

CHAPTER III.

EXECUTION OF WRITS.

It is next proposed to consider the Sheriff's duties in and about the execution of writs in real, mixed, and personal actions.

SECTION I.

DOWER.

Dower, definition of.

Dower is the portion which a widow hath for the term of her life of the lands of her husband at his decease, for the sustenance of herself and education of her children, "*propter onus matrimonii, et ad sustentationem uxoris et educationem liberorum cum fuerint procreati si vir præmoriatur*" (a). Two kinds only now remain (b): 1. Dower by the common law: 2. and dower by the custom: the common law dower in quantity is one third, and thence called "*a widow's thirds*;" the latter is the creature of custom—sometimes one half, as by the custom of gavel kind; sometimes the whole during her life, and then it is called "*free-bench*;" and as custom may enlarge so it may abridge her dower to one fourth (c).

How many kinds remain.

Principle of old and new law.

With regard to this portion or provision, the law until the recent statute of Will. 4 was inflexible in the widow's favour (unless forfeited by her own misconduct) and allowed of no *veto* in the husband, or right in him of his own mere motion to deprive her of, or in anywise restrict her right after it had once attached. Now however his marital power *quoad* this provision is of a very different character—but although based upon different, we must hope and trust, upon the soundest moral and political principles.

How husband may deprive

He may at this day deprive her wholly of it by deed of conveyance in his life time or by his will, or he may fetter her right

(a) 1 Inst. 30.

(b) 3 & 4 Will. 4, c. 106.

(c) Co. Litt. 33.

by conditions, restrictions, or directions by a declaration to that effect in his will, or by a devise of some part of his real estate to her; all or any of these things he may now do *quod* husband, unless precautionary measures have been taken by her to suspend in him the power of exercising such his marital rights.

widow of dower.

It should also be observed, that all partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject, now have *priority* to dower.

What incumbrances have priority to dower.

On the other hand however she is entitled to dower out of an *equitable* estate, which she was not entitled to before, and other advantages needless to refer to here.

But she is entitled out of *equitable* estate.

Having premised thus much on the present nature of dower; and that two writs only now (*d*) remain:—namely, 1. *a writ of right of dower*; 2. *a writ of dower unde nil habet*; we proceed to show the Sheriff's duties in and about the execution of them.

Præcipe for Writ of Dower unde nil habet (e).

Westmorland, } Command *A. B.* that justly and without delay he
to wit. } render to *C. D.* widow, who was the wife of *J. D.*, her
reasonable dower which falleth to her out of the freehold which was of
the said *J. D.*, late her husband, in the parish of *E.*, [or "parishes of *E.*
and *F.*"] whereof she has nothing as she says. Returnable on the (*f*)
day of , A. D. 1839.

Writ of Dower unde nil habet.

Victoria, &c. to the Sheriff of *W.* (*g*) greeting: command *A. B.* that

(*d*) 3 & 4 Will. 4, c. 27, s. 36.

(*e*) *A writ of dower unde nil habet* lies only where the widow is endowed of *no part* of her dower:—2. *A writ of right of dower* lies when she is endowed of *parcel* but is deformed of the residue in the same town or vill by the same tenant by whom she was endowed of part; 1 Roper. 434; 1 Roscoe, 29; 2 Inst. 262; 9 Vin. Abr. 275. She may have her writ against an heir, alienee, disseisor, &c. or against any one that has power to assign dower; if the lord enter upon the land for an escheat she may bring it against him, but to the Queen she must sue by petition. Co. Litt. 29; 9 Rep. 10; Plowd. 146; Dyer, 263, 107; it is is-

sued by the *cursitor*, office Rolls Yard, Chancery Lane. See 1 Ch. Arch. 27, edit. 6, sect. 4. The Court of Common Pleas has exclusive jurisdiction in all *real actions*.

(*f*) May be made *returnable* on the third day exclusive before the commencement of each term, or on any day not being Sunday, between that day and the third day exclusive, before the last day of the term; 1 Will. 4, c. 3, s. 2; and the Sheriff now returns his writs at once into the Master's office.

(*g*) *Fulliam v. Harris*, Cro. Jac. 217; if the lands lie in *London* the writ of dower is directed to the Lord Mayor and Sheriffs; 1 Rop. 429; F.

justly and without delay he render to *C. D.* widow, who was the wife of *J. D.* now deceased, her reasonable dower which falleth to her of the freehold which was of the said *J. D.*, her late husband, in the parish of *E.*, [or "parishes of *E.* and *F.*"] in your county, whereof she hath nothing as she says: and whereof she complains that the said *A. B.* deforceth her, and unless* he shall do so, and if the said *C. D.* shall give you security to prosecute her claim then summon by good summoners the said *A. B.* that he be before our justices of the bench at Westminster, on the day of , A. D. 1839, to show wherefore he hath not done it, and have then the summoners and this writ. Witness, &c.

Pledges (h) to prosecute	{ <i>John Doe</i> and <i>Richard Roe.</i>
Summoners	{ <i>John Venn</i> and <i>Richard Fenn.</i>

Writ of Dower unde nil habet.

[*Where Widow has Married again.*]

Victoria, &c. to the Sheriff of *W.* greeting: command *A. B.* that justly and without delay he render to *C. D.* and *Mary*, his wife, [which said *Mary* was formerly the wife of *E. F.* deceased,] the reasonable dower of her the said *Mary*, which belongs to her of the freehold which was of the said *E. F.* her late husband, in the parish of *E.* in your county, whereof she hath nothing as they say, and whereof they complain that the said *A. B.* doth unjustly deforce them, and unless, &c. (i) [*as in last precedent from asterisk.*]

The Sheriff upon receipt of the writ, according to the following precedent, issues his

Warrant.

Matthew Atkinson, Esq. Sheriff of *C.* to *J. D.* and *J. F.* my bailiffs for this time only, greeting: by virtue of a writ of dower of our lady the Queen *unde nil habet* to me directed, I command you that you command *A. B.* that justly and without delay he render to *C. D.*, widow, who was the wife of *J. D.*, her reasonable dower which [*&c. as in writ,*] deforceth her; and unless he shall do it then summon the said *A. B.* that he be before the justices of our lady the Queen, at Westminster on, &c. to show wherefore he will not do it; and that after the said summons is made, you do at the most usual door of the parish church of the parish of *E.*, on *Sunday* next after the said summons, immediately after divine service is ended, proclaim the same summons according to the form of the statute in such case made and provided. Given under the seal of my office this, &c.

(Seal of office.)

G. A. High Sheriff

N. Br. 148. The writ should be brought against all the tenants of the freehold, that is, the persons claiming a freehold interest, and not mere te-

nants having a chattel interest; *Ibid.* 346.

(h) The rule of M. T. 3 Will. 4, c. 15, does not apply.

(i) Booth, 166.

Summons.

By virtue of her Majesty's writ of dower *unde nil habet*, to the Sheriff of C. directed, and by virtue of the said Sheriff's warrant to us directed, we do hereby require and command you that you render to C. D. [*&c. as in writ*], as she alleges and complains that you the said A. B. keep her out of the same; and if you refuse so to do, then we do hereby summon you that you be and appear before her Majesty's justices at Westminster on, &c., to show cause why you do not.

The summons must be made in the day time (between sun-rising and sun-setting), and not in the night; Dalt. 161. Summons,
when made;

The Sheriff's order to serve or execute this process is to go himself, or to send his bailiff *to the land* with the summoners, then to garnish, cite, or warn the tenant or party by sticking up a white stick in his land, which is done whether the tenant is there or not; and the demandant is not bound to give him notice of the summons; 2 Inst. 253; Dalt. 149, 153.

The summons must be made by (or in the presence of) two how made; or three summoners; *ibid.*: for a summons of the tenant must be proved by two or three witnesses; Co. Litt. 6 b: and this summons or warning of the defendant to appear and answer, &c., is so necessary by the common law as that without the same all the proceedings, yea, and the judgment after all oftentimes prostrated and erroneous, and besides renders the Sheriff subject to danger and punishment; Fitz. Disceit, 3, 5, and 56; F. N. Br. 105 a.

The Sheriff cannot summon himself; *Wyke's Ca.* Dyer, 266 a; by whom; and *semble*, that he is not a good summoner, for it is said in Dalton, p. 154, cited from "Mirror of Justices," "*Femes ne Sheriffs, ne enfans, ne ul que ce est freehold tenant, poent estre bon summoners.*" Neither women, nor Sheriffs, nor infants, nor any other but a freehold tenant can be a good summoner.

If the defendant be not tenant of the land the summons must where
made. be made *in terrâ petitâ*, for the writ commands the Sheriff not to summon the tenant upon his own land, but *generally* that he shall summon him, not naming in what land; and then by a maxim of law it is taken that he shall summon him in the land in demand; Dr. & St. 150; Kite. Ret. Br. 54. So where against

heir it must be made on land that did descend, because it is the *terra petitâ* or land in demand. *Note*, if tenant appears, it is not material in what land he is summoned; Dalt. 152; Finch. 344.

It is said a summons *personally* on the defendant is sufficient without either summons on the land or proclamation at the church door; Dalt. 225; but see 1 Roper, 430.

Proclama-
tion of sum-
mons.

By the statute of 31 Eliz. c. 3, s. 2, it is enacted, "that after every summons upon the land in any real action, fourteen days (*k*) at the least before the day of the return thereof, *proclamation of the summons* shall be made on a Sunday, in form aforesaid, at or near to the most usual door of the church or chapel of that town or parish where the land whereupon the summons was made doth lie, and that proclamation so made as aforesaid shall be returned, together with the names of the summoners; and if such summons shall not be proclaimed and returned according to the tenor and meaning of this act, then no *grand cape* to be awarded, but *alias* and *pluries* summons, as the cause shall require, until a summons and proclamation shall be duly made and returned according to the tenor and meaning of this act."

Proclama-
tion, how
made.

The proclamation is made by reading the summons; it must be at the *parish church* door, though it lies in another county; Cro. Eliz. 472; Register's Ca.; and after the summons, 1 Mod. Rep. 197; when the lands lie in more parishes than one a proclamation made at the parish church door of *one* is sufficient within the act; *Allen v. Walter*, Hob. 133.

Return of Writ (l).

Received 1st of —, A. D. 1838.

Pledges of prosecution	{	John Doe
		and
		Richard Roe.
Summoners	{	John Bellassys.
		Thomas Earl.

And after the aforesaid summons made, to wit, at the most usual door of

(*k*) Hence it follows that the summons and proclamation must be at least fourteen days before the return of the writ.

(*l*) A return of infancy or coverture is bad; Cro. Jac. 111; a return that the Sheriff had proclaimed "the contents of the writ," is insufficient, because he must proclaim that he

made summons on the land; Hob. 133; however, according to the modern practice, it seems sufficient to return "that he the Sheriff made proclamation of the said summons, according to the form of the statute in such case made and provided;" 2 Wils. 164.

the parish church of *E.* within specified, within which the tenements within mentioned do lie, upon the Lord's day, to wit, on the day of , in the year of our Lord 1838, immediately after divine service and sermon in the said church was ended, I made proclamation of the aforesaid summons according to the form of the statute in such case made and provided. *G. A., Esq., High Sheriff.*

In default of appearance according to law, (which "shall be the third day after such return, exclusive of the day of the return, or, in case such third day shall fall on a Sunday, then on the fourth day after such return, exclusive of such day of return (*m*);") the next process for the demandant is the

On default of appearance.

Grand Cape(n).

Victoria, &c., to the Sheriff of *W.*, greeting (*o*): Take into our hand by the view of good and lawful men of your county, the third part of, &c. in the parish of *M.* in your county, which *F. A.* in our Court, before our justices at Westminster, claims as the dower of her the said *F. A.* of the endowment of *J. A.* her late husband, against *C. D.* by our writ of dower *unde nihil habet*, for the default of him the said *C. D.*, and the day of the taking thereof make known to our justices at Westminster by your letters under seal, and summon by good summoners the said *C. D.*, that he be before our justices at Westminster on , according as he was summoned before our justices at Westminster on last past, and have there the names of those by whose view you shall do this and this writ. Witness, &c.

Return thereto(p).

By virtue of this writ to me directed, I have by *J. B.* and *C. D.*, good and lawful men of my bailiwick, given notice to the within-named *C. D.* to be and appear before the Queen's justices at Westminster at the time and place within mentioned, and as I am within commanded. I have taken by the view of *J. S.* and *R. A.*, honest and lawful men of my county, into her Majesty's hands, the land and premises within mentioned, as also I am within commanded.

The answer of *G. A., Esq., High Sheriff.*

The execution of this writ appears in a certain schedule hereto annexed.

The answer of *G. A., Esq., High Sheriff.*

(*m*) 1 Will. 4, c. 3, s. 2.

(*n*) The distinction between a *grand cape* and *petit cape* is this—the former never lies after an appearance by the tenant in chief; the latter issues after the tenant has appeared and makes default subsequently to his appearance; 1 Roper, 433.

(*o*) The part of the writ which commands the Sheriff to take the land into the hands of the Queen is mere

form, and void; Dalt. 249; see 3 Wils. 55; if the place be within a liberty the Sheriff must send his mandate to the bailiff of the liberty, as in other cases; *ibid.* This writ must be served fifteen days before the return day; Br. *Grand Cape*, 29.

(*p*) If there be no lands, &c. the Sheriff may return *nihil*; Fitz. 113. And that there is no such town; *ibid.*

If the Sheriff does not return the writ the demandant may sue out an *alias grand cape* at the return of the first writ.

Appear-
ance.

If the defendant appears on the summons or on the grand cape, and in the latter case when the default of appearance upon the summons has released the defendant, the demandant must plead (q).

Default of
appearance.

If on the return of the grand cape the tenant makes default, and the demandant insists upon the default, he must have final judgment, but the demandant *may* waive the default and take an appearance upon the grand cape.

Writ of Inquiry and Seisin (r).

Victoria, &c., to the Sheriff of W., greeting: Whereas F. A., widow, who was the wife of J. A., lately in our Court, before our justices of the bench at Westminster, recovered her seisin against C. D. of the third part of, &c., with the appurtenances, in the parish of M. in your county, as her dower of the endowment of the said J. A., her late husband, by our writ of dower, whereof she has nothing, as by the record and process thereof now remaining in our said Court appears to us of record; therefore we command you, that without delay you cause the said F. A. to have her full seisin of the said third part, with the appurtenances, to hold to her in severalty by metes and bounds, and how you shall have executed this writ make known to our said justices at Westminster, on, &c.; we command you also that by the oath of twelve good and lawful men of your bailiwick, you diligently inquire if the said J. A., the late husband of the said F. A., died seised of, or had a right to (s), the said tenements, with the appurtenances, in fee simple or fee tail, at law or in equity, and if by that inquisition you shall have so found, that you diligently inquire how long time has elapsed from the death of the said J. A., and how much the said tenements, with the appurtenances, are worth by the year, in all issues beyond reprises, according to their value; and what damages (t) the said F. A. hath sustained, as well by occasion of the detention of her said dower beyond the said value, as for her costs and charges by her about her suit in this behalf expended, and the inquisition thereupon made make known to our said justices at the said time under your seal and the seals of those by whose oath you shall have made that inquisition, and this writ. Witness, &c.

(q) See all the pleadings collected in that invaluable work of Mr. Chitty's on Pleading, 3 vol. 1314; 2 Saund. 43 b.

(r) *No alias habere facias seisinam* can issue: in 3 Dyer's Rep. 278 a, Anon., the Sheriff assigned dower by metes and bounds, but the demandant refused to receive it: holden a good return, and that the widow might

enter at any time after without an *alias*.

(s) 3 & 4 Will. 4, c. 105, ss. 2, 3.

(t) *Damages* are given in dower from the death of the husband and to the return of the writ of inquiry, although the writ of seisin issued a year before, but was not executed; Hard. 19.

Return to Writ of Inquiry and Seisin.

Westmorland, } An inquisition taken at , in the said county,
 to wit. } the day of , between the hours of ten and
 twelve of the clock in the forenoon of the same day, in the year of our
 Lord 1839, before me G. A., Esq. Sheriff of the said county, by virtue
 of her majesty's writ to me directed, upon the oaths of twelve good and law-
 ful men of my bailiwick, and being then and there sworn and charged,
 upon their oath say, that J. A., in the said writ named, died, *seised of* (u),
 &c. with the appurtenances at M. in the parish of M. in the said county,
 in his demesne as of *fee simple*, and that the tenements aforesaid, with
 the appurtenances, are worth by the year, beyond reprises, according to
 the true value of the same, the sum of £ , and that years
 and months are elapsed from the death of the said J. A., and that
 C. D. his widow, in the same writ named, hath sustained damage by
 reason of the detaining her dower in the said writ specified, to the value
 of £ , and for costs and charges by her about her suit in that
 behalf expended the sum of 40s. In testimony whereof, as well I, the
 said Sheriff, as the jurors aforesaid, have interchangeably put our seals to
 this inquisition the day, year, and place, above written.

The answer of G. A., Esq. High Sheriff.

And I do further certify to the justices of our lady the Queen at West-
 minster, that by virtue of the said writ I did on, &c. cause the said F. A.
 to have full *seisin* of the third part of the, &c. with the appurtenances, to
 wit, of, &c. in the tenure of A. B., to hold to the said F. A. in severalty
 by metes and bounds, as the dower of the said F. A. of the endowment
 of the said J. A., her late husband, as by the said writ I am commanded (x).
 The residue of the execution of this writ appears in the inquisition hereunto
 annexed.

The answer of G. A., Esq. High Sheriff.

The Sheriff can only assign dower according to the rule of the common law and the tenor of the writ addressed to him by the Court (y): when according to the exigencies of the writ the whole, as in *gavelkind*, is to be seized (it being one entirety,) no difficulty can arise in executing it, but when a part of a whole is to be seized, and that part incapable of a *beneficial* severance, as in mines, tolls, and the like, the assignment of dower is not unfrequently beset with no ordinary difficulties.

Dower how
assigned by
Sheriff.

The general rule is, that if the thing of which she is endowed be divisible, her dower must be set out by metes and bounds (*metis et burdis* (z)); but if it be indivisible she must be endowed specially; as of the third presentation to a church, the

General
rule.

(u) "*seised of*," or "entitled to," as the case may be; see *ante* "Writ."

(x) See *Howard v. Cavendish*, Cro. Car.

(y) 1 Roll. Abr. 683, pl. 35; see

also 1 Roper on Husband and Wife, where the matter is ably treated.

(z) Hence it follows that the endowment must be parcel of the lands themselves.

Special in-
rolment. third toll dish of a mill, or "*de integro molendino per quemlibet 3 mensem*" (a); the third part of the profits of an office; the third part of a piscary, *videlicet*, tertium piscem vel jactum retis tertium; of a rent charge; common of pasture, that is, stinted, but not common *sans nombre* (b).

Dower of
mines how
assigned.
Stoughton v.
Leigh.

The judgment in the case of *Stoughton v. Leigh* (c) throws considerable light on the mode of executing this writ, especially when the subject matter is incapable of a *beneficial* severance as in mines: it was a case directed out of the High Court of Chancery for the opinion of the Court of Common Pleas, and the *main* features of it were these:—*John Hanbury* died seised of divers landed estates and of several mines and strata of lead and coal—some of these mines being under his *own* land—others under land not his own; some of them opened, others not opened. The *certificate*, after stating that the widow was not dowable of any of the mines or strata which had not been opened at all, whether in lease or not, proceeds to say, that "in assigning the dower of *Mr. Hanbury's own lands* the Sheriff must estimate the annual value of the open mines therein as part of the value of the estates of which the widow is dowable; but it was not absolutely necessary that he should assign to her any of the open mines themselves, or any portion of them. The third part in value which he should assign to her might consist wholly of land set out by metes and bounds, and containing none of the open mines. Or he might include any of the mines themselves in the assignment to the widow, describing them specifically, if the particular lands in which they lie should not also be assigned; but if those lands should be included in the assignment, the open mines within them might, but were not necessarily to be so described, being part of the land itself which was assigned: and as the working of open mines was not waste the tenant in dower might work such mines for her own exclusive profit. Or the Sheriff might divide the enjoyment and perception of the profits of any of the particular mines as after mentioned. In regard to the mines and strata which *Mr. Hanbury had in the lands of other persons*, they were of opinion that it was not necessary that the Sheriff

(a) Co. Litt. 32; Cro. Car. 621, 691; Perk. 343; 1 Roll. Abr. 683; 3 Leon. 155; Fitz. 149; Plowd. 65;

Br. Dowr. 72; see also 1 Keble Rep. 743.

(b) Co. Litt. 32.

(c) 1 Taunt. Rep. 402.

should divide each of the mines or strata ; but he might assign such a number of them as might amount to one-third in value of the whole, or he might proportion the enjoyment of such of them as he should think necessary, so as to give each a proper share of the whole. If the division of an open mine could be made by metes and bounds as lands are required to be divided, without preventing the parties from having the proper enjoyment and perception of the profits, they thought that mode should be adopted ; but as the property seemed to them to be incapable of a beneficial severance in that way, they thought the case analogous to some of those stated by Lord Coke, 1 Inst. 32 a, wherein it is held that the Sheriff may make the assignment in a special manner, and that therefore he might proceed with respect to the mines in question. They found no authority, however, establishing any precise mode of dividing a mine, nor could they point out any that might not be attended with inconvenience ; but if the Sheriff was to make the assignment they thought he might lawfully execute his duty by directing separate alternate enjoyment of the whole for short periods, proportioned to the share each had in the subject, or by giving the widow a proportion of the profits. In answer to the last question proposed to them, they were of opinion that the widow was entitled to work for her own exclusive use the open mines within the close that had been assigned to her, without any exception of the mine, for her dower of one of the estates, notwithstanding the excess arising from the omission of such exception ; and inasmuch as the assignment was the *act of the heir himself*, being of full age at the time, they thought he had no remedy at law against the dowress for avoiding the consequences of that act. Had he been under age at the time, he might have had relief by writ of admeasurement of dower ; or had the assignment been made by the Sheriff in execution of a judgment in dower, the heir might have had a *scire facias* to obtain an assignment *de novo*."

The Sheriff may put the widow into possession or seisin by a elod, or by grass growing upon the land, or by any beast being upon the land (d), or he may assign it by parol (e).

How possession given by the Sheriff.

(d) Fitz. Dower, 38.

(e) Co. Litt. 35 a ; *Power v. Power*, 2 N. R. 1, 34.

When lands are meadow, pasture and corn. If the commands of the writ be to deliver possession of a third part of all lands and tenements, &c. and there are lands in meadow, pasture and corn, he may assign dower *in toto* out of any of them (*f*).

Certainty of return. It is not necessary for him to state in his return the *particular* fields which he has assigned, it is sufficient to state with certainty of what such thirds consist (*g*).

Excessive assignment. The Sheriff's mistake in assigning dower may be corrected on a *scire facias* for an assignment *de novo* by the heir or tenant (*h*); *semble*, a Court of Equity would relieve (*i*).

Sheriff's misconduct. For any misconduct in assigning dower the Court will punish the Sheriff (*k*)—in the case cited he was committed to prison.

SECTION II.

QUARE IMPEDIT.

What is. This is the proper process to try the right to a presentation; by the common law there were three writs for the church itself:—
 1. Right of advowson. 2. Assize of darrien presentment. 3. Quare impedit (*a*); into the nature of the two former it is at this day needless to inquire as they have been by a recent statute (*b*) wholly abolished, the last alone having "survived the wreck of matter and the crush of worlds."

The only remedy at this day.

A mixed and not a real action.

A possessory action.

It is in strictness a *mixed* and not a *real* action (*c*).

It is a *possessory* writ and lies for the patron of an advowson, to restore him to the possession of his advowson and to his right

(*f*) Moore, 19, pl. 66.

(*g*) *Howard v. Cavendish*, Cro. Jac. 621, pl. 18; Palm. 264.

(*h*) 1 Roper on Husb. and Wife, 406; Gilb. "Dower," 389.

(*i*) *Hoby v. Hoby*, 1 Vern. 218; 1 Roper, *suprà*; *Sneyd v. Sneyd*, 1 Atk. 442.

(*k*) *Howard v. Cavendish*, *suprà*; *Longville's Ca.* 1 Keb. 743.

(*a*) 2 Inst. 357.

(*b*) 3 & 4 Will. 4, c. 27, s. 36.

(*c*) *Barnes v. Jackson*, 1 Sc. Rep. 520; the Rules of Hil. Term, 2 Will. 4, do not extend to it; *ibid.* *Tindal*.

of presentation ; at common law it only lay when the patron was hindered from presenting during the vacancy of the church (*plenarty* being in all cases a good plea,) but since the statutes of Westminster 2, (13 Edw. 1,) and 7 Anne, c. 18, *plenarty* is no plea, " so that the writ be purchased within the six months, though he cannot recover his presentation within the six months ;" even if the six months are elapsed he may on the next avoidance bring his writ of *quare impedit*.

For whom it lies.

When at common law.

A patron is said to be disturbed in presenting either when the bishop hath admitted and instituted a clerk upon the presentment of another pretended patron, or when the bishop will not admit the patron's clerk presented him upon any pretence. But if the ordinary hath filled the church by a wrongful collation the patron is not thereby disturbed, and in such a case the patron must present, and the ordinary refuse to admit his clerk before the patron can bring his action ; neither is there a disturbance by a stranger presenting a clerk, unless the bishop hath admitted him, but if admitted the disturbance is complete, and the patron may bring his action without making any presentment to the bishop (*d*).

When a patron is deemed to be disturbed.

Before the statute of 7 Anne, c. 18, an usurpation of a presentation did at common law displace the right of advowson, and no possessory action could be brought, but since then no usurper or disturber could divest the right of presentation out of the true patron, or acquire the inheritance of the advowson by wrong ; the provisions of which did in effect take away all limitation of suit about the right, and enabled the true patron to present at any time on the church becoming vacant, or if disturbed might have had his *quare impedit* (*e*).

Statute of limitation.

But upon the recommendation of the real property commissioners a statutory limitation is now fixed by the 3 & 4 Will. 4, c. 27, ss. 29—34.

A patron may have a *quare impedit* for a church, chapel (*f*),

For what the writ lies.

(*d*) Watson's Cl. Law. 238 ; Hob. 200.

(*e*) See also Plowd. Rep. 358, 370 ;

Shelford's Real Prop. Stat. p. 10, and cases there cited.

(*f*) *Bedford v. Lincoln*, 2 Willes, 611 ; 14 Hen. 4, c. 6.

vicarage, prebend (*g*). So the writ lies for a donative (*k*) deanery (*i*) by the Queen though elective, archdeaconry, for it is not a mere function but is local, so that an archdeacon hath *locum in choro*; but not for a chancellorship or commissaryship, for they are mere offices although granted for life; for a bishop disturbed, or for the Queen disturbed (*k*); for the grantor (*l*) of an advowson against the [patron] grantor; executors on their disturbance, or on the disturbance of their testator (*m*); husband and wife jointly, or the husband alone *jure uxoris*—if he die, the wife may sue alone on that disturbance (*n*); a claimant under a recovery (*o*); the Queen (*p*); a parson patron of a vicarage (*q*); and for the chapter in respect of their possession against the dean; if one has the right of nomination and another the right of presentation, and either of them impedes the other, this will lie (*r*); or if a stranger presents, the two may join (*s*); tenants in common and joint tenants must join (*t*); likewise coparceners, when there has been no composition to present in turn (*u*); an heir cannot have this writ for a disturbance in his ancestor's life time, unless the church be donative (*x*). *Note, a donative benefice descends to the heir at law, a presentation to the executor.*

Plaintiff must have an immediate right of possession.

Parties to be made defendants.

The plaintiff (it being a possessory action) must have an immediate right of presentation, and not merely a reversion or remainder.

It (*y*) is generally advisable to bring it against the bishop, the pretended patron, and his clerk, and the reason is plain—the bishop is not made a party to the suit, and the suit is not determined until six months are past, the bishop may present

(*g*) 13 Edw. 1, c. 5; *Smallwood v. Bishop of Lichfield*, 1 Leon. 205; 3 Croke, 141; Owen, 99.

(*h*) Co. Litt. 344.

(*i*) 17 Edw. 3, c. 40.

(*k*) Bull. N. P. 125, (*a*) n.; Watson's Cl. Law, 240; Co. Litt. 344.

(*l*) Fitz. Abr. 95; 39 Hen. 6.

(*m*) Owen, 99; Lutw. 1.

(*n*) 5 Co. 97.

(*o*) 7 Hen. 8, c. 4.

(*p*) F. N. Br. 32.

(*q*) *Ibid.* 49.

(*r*) 3 Term Rep. 651.

(*s*) Dyer, 48, a.

(*t*) Br. Abr. (Joinder in Action,) 103; Co. Litt. 197 b; Wats. C. L. 254.

(*u*) 2 Inst. 365; 1 Hen. Bl. 417.

(*x*) 1 Roscoe on Real Actions, 101; 2 Wil. Rep. 150.

(*y*) As to parties, see further in Com. Dig. Pleader, 3, l. 1, 2; Sell. Pr. vol. ii. 321; Lee's Pr. Dict. "Quare impedit;" Watson's C. L. *suprà*.

by lapse, whereas if he is made a party, no lapse can accrue until the right is determined. Again, if the pretended patron is not made a party, the suit is of none effect and the writ shall abate, for the right of the patron is the principal question in the cause (z). If the clerk be not made a party, and he has received institution before action brought, the right of patronage may be recovered but not the present turn; for he cannot have judgment to remove the clerk unless he is a party.

Writ of Quare Impedit.

Victoria, &c. To the Sheriff of *W.* greeting: Command *Hugh*, bishop of Carlisle, *A. B.* Esq. and *C. D.* clerk, that justly and without delay they permit *X. Y.* to present a fit person to the church of *M.*, which is void, and in the gift of the said *X.* as he saith; and whereof he complaineth that the aforesaid bishop, *A.* and *C.* unjustly hinder him; and unless they shall so do, and the said *X.* shall give you security to prosecute his suit, then summon by good summoners the said bishop, *A.* and *C.*, that they be before our justices at Westminster, on, &c. to show why they will not do it, and have you then the summoners and this writ. Witness ourself at Westminster, the day of , in the year of our reign.

Warrant thereon.

Westmorland, } *G. A.*, Esq, Sheriff of the county aforesaid, to *J. B.*
to wit. } and *T. S.*, my bailiffs, greeting: By virtue of her majesty's writ of *quare impedit*, under the great seal of Great Britain, to me directed, I command you that you command *Hugh*, bishop of *C.*, *A. B.*, Esq. and *C. D.* clerk, that justly and without delay they permit *X. Y.* to present a fit person to the church of *M.*, which is void and in the gift of the said *X.* as he saith; and whereof he complaineth that the aforesaid bishop, *A.* and *C.* unjustly hinder him: and unless they shall so do, then I command you that you summon by good summoners the said bishop, *A.* and *C.*, that they be before her Majesty's justices at Westminster, on &c. to show why they will not do it. Given under the seal of my office, this day of , 1839.
[Seal of office.] By the Sheriff.

Bailiff's Summons on a Quare Impedit (a).

By virtue of her Majesty's writ of *quare impedit*, under the great seal of Great Britain, to the Sheriff of the county of *W.* directed, and by virtue of the said Sheriff's warrant thereupon to us directed, we do hereby require and command you, *Hugh*, bishop of Carlisle, *A. B.*, Esq., and *C. D.*, clerk, that ye justly and without delay permit *X. Y.* to present a fit person to the church of *M.*, which is void, and in the gift of the said *X.*, as he saith, and whereof he complaineth that ye, the said bishop, *A.*

(s) Hob. 316; 7 Rep. 25.

(a) The summons may be made in the church or to the person; the Sheriff may return *tardè*; New Ret. Br. 409.

Also he may return *nilil* upon the summons and upon the *attachment* and *distringus*; *ibid.*; *vide* Imp. 532.

and C., unjustly hinder him: and unless ye shall so do, then we do hereby summon you, that ye be before her Majesty's justices at Westminster on &c., to show cause why ye will not do it. Given under our hand, this day of , 18 .

To the Right Rev. Father in God, <i>Hugh</i> ,	} J. B. } Bailiffs. T. S. }
Lord Bishop of Carlisle, <i>A. B. Esq.</i> and	
<i>C. D. Clerk</i> , and each and every of them. }	

Return.

Pledges to prosecute { *John Doe*,
 } *Richard Roe*.

Summoners { *J. B.*
 } *T. S.*

By virtue of this writ to me directed, I have summoned the within-named bishop, *A.* and *C.*, that justly and without delay they permit the within-named *X.* to present a fit person to the church within-mentioned: and I have also summoned, by the good summoners above-named, the said bishop, *A.* and *C.*, that they be before her Majesty's justices at Westminster, on &c. to show why they will not do it, as by this writ I am commanded.
G. A. Esq. High Sheriff.

Pone, issued after the Return of the Quare Impedit.

Victoria, &c. to the Sheriff of *W.* greeting: We command you that you put by sureties and safe pledges *A. B. Esq.* and *C. D. clerk*, that they be before our justices at Westminster on, &c. to answer us of a plea, that they permit *X. Y.* to present a fit person to the church of *M.*, which is void, and in the gift of the said *X.*, and whereof the said *A.* and *C.*, together with *Hugh*, bishop of Carlisle, unjustly hinder the said *X.*; and to show wherefore they were not, together with the said bishop, in our court, before our justices, at Westminster, at a certain day now past, as they have been summoned: and have you there the names of the pledges and this writ. Witness, &c. (*b*).

Return, indorsed on the Pone.

The answer of *A. B.*, Sheriff of the county of *W.*

Summoners of the within-named, { *J. B.*

A. B. and *C. D.* are, { *H. B.*

Pledges are { *John Doe*,
 } *Richard Roe*.

G. A. Esq. High Sheriff.

Damages.

If the issue be found for the plaintiff the jury are to inquire first, whether the church be full; secondly, upon whose presentment; thirdly, how long since it was void; fourthly, the yearly value; which being found, damages are to be given according to *Westminster* 2, c. 2, [13 Edw. 1, c. 5, s. 3,] viz. *two years' value* of

(*b*) The Sheriff's warrant upon the pone may easily be framed from other precedents and the writ, (ending as in

writ), "and to show wherefore they were not, together with the said bishop, in her Majesty's Court," &c.

the church, or defendant (if insolvent) shall be imprisoned two years ; or half a year's value and half a year's imprisonment, as the case may be (c).

The Queen can have no damages in *quare impedit* (d).

Queen has no damages.

The plaintiff shall recover no damages when the church remains void ; and if the jury tax damages a *remittitur de damnis* must be entered (e).

Damages where church remains vacant.

The judge at *Nisi Prius* has power to give judgment immediately (f).

Immediate execution.

SECTION III.

EJECTMENT.

Before the statute of 1 Will. 4, c. 70, no writ of possession could issue to the Sheriff until after final judgment had been signed, but section 38 thereof enacts, " that when a verdict is given for plaintiff, or he is nonsuited for want of defendant's not confessing lease, entry, or ouster, the judge before whom the cause was tried may certify his opinion on the back of the record, that a writ of possession ought to issue *immediately*, and upon such certificate a writ of possession may be issued *forthwith* ; and the costs may be taxed, and judgment signed and executed afterwards at the usual time, as if no such writ had issued." It will be observed, that this certificate extends only to a writ of possession, and not to a writ of execution for costs or damages ; but although not under this statute the judge may clearly certify for them under the 1 Will. 4, c. 7, s. 2.

Habere facias possessionem, when issued.

Judge's certificate for immediate execution.

If no certificate be granted, no writ of possession can issue until after final judgment, as before the act.

Execution when there is no certificate.

Whether there be any discretion in the judge *as to the time* when the writ shall issue seems not quite settled (a) ; it would appear in the affirmative, if not under 1 Will. 4, c. 70, under

(c) Lee's Prac. Dict. " Quare impedit ;" Bull. N. P. 123.

(d) Hob. Rep. 23.

(e) Holt v. Holland, 3 Lev. 59 ; Bull. N. P. 123, a.

(f) Westm. 2, c. 30 ; Bull. N. P. 123 b.

(a) Doe d. Williamson v. Dawson, 4 C. & P. 689.

Judge's discretion as to time of issuing.

and by virtue of 1 Will. 4, c. 7, s. 2; at all events, cases have occurred where certificates have been granted on an undertaking by the lessor of the plaintiff not to enforce it before the expiration of a certain time (b).

Where the lessor of the plaintiff has been *non-suited* for want of the defendant's confessing lease, entry, or ouster, the certificate can not be obtained without an affidavit of the circumstances of the case (c).

Writ of Possession (d).

Upon a double demise and double ouster.

Victoria, &c., to the Sheriff of W., greeting: Whereas *John Doe* lately in our Court before us, [*or in C. P.*, "before our justices," *or in the Exchequer*, "whereas *John Doe* our debtor lately in our Court before the barons of our Exchequer,"] at Westminster, by the consideration and judgment of the same Court, recovered against *C. D.* his term yet to come, of, and in, &c. [*as in declaration*], with the appurtenances, situate in the parish of _____ in your bailiwick, which *T. S.* had on, &c. [*day of demise in the declaration*], demised to the said *John Doe* for a term which is not yet expired; by virtue of which said demise the said *John Doe* entered into the said tenements with the appurtenances, and was thereof possessed until the said *C. D.* afterwards, on, &c. [*day of ouster in declaration*], with force and arms, &c., entered into the said tenements with the appurtenances so demised to the said *John Doe* for the term aforesaid, and ejected the said *John Doe* from his farm, whereof the said *C. D.* is convicted, as appears to us of record * [*in Exch.* "as by inspecting the rolls of our said Exchequer appears to us"]: and whereas also the said *John Doe* lately in our same Court, by the consideration and judgment of the same Court, recovered, &c. [*ut supra, using the words "other" and "last mentioned"*]; therefore we command you that without delay you cause the said *John Doe* to have the possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances, and in what manner you shall have executed this our writ make appear to us on, &c., wheresoever we shall then be in England [*or in Q. B. by bill, "to us at Westminster, on _____," or in C. P., "to our justices at Westminster on _____," or in Exch., "make appear to the barons of*

(b) *Doe d. Packer v. Hilliard*, 5 C. & P. 132.

(c) 4 Car. & P. 589.

(d) There is no occasion for any *precipe* for the writ; the writ is engrossed on parchment and sealed, but not signed; R. H. 2 Will. 4, c. 75, s. 76; the sealer of the writs will seal it on production of the *postea* and judgment paper, and the certificate (if any); it is thereupon left at the Sheriff's office, and warrants made out in due course: the stat. of 3 & 4 Will. 4, c. 67, s. 2, as to making writs returnable "*immediately after*

the execution" thereof, does not apply to ejectment. If the writ be not executed upon the return of it an *alias*, &c. may be issued; Palm. 289; but if possession have been once completely given an *alias* cannot be issued although he be disturbed by the same defendant, and although the Sheriff hath not yet returned the writ; *Doe d. Pate v. Roe*, 1 Taunt. 55; 2 Dowl. 200; such a disturbance, however, might be deemed a contempt of Court and punished accordingly; 2 W. Bl. 892; 6 Mod. 27; Sty. 277.

our said Exchequer at Westminster, on "], and have you there then this writ. Witness, &c.

Into the County Palatine of Lancaster.

Victoria, &c., to our chancellor of our county palatine of Lancaster, or to his deputy there, greeting: Whereas, &c. [*as in last precedent to the asterisk*]; therefore we command you, that by our writ under the seal of our said county palatine, to be duly made and directed to the Sheriff of the same county, you command the said Sheriff that without delay he cause the said *John Doe* to have the possession of his *term* aforesaid yet to come of and in the *tenements* aforesaid, with the appurtenances, and in what manner the said Sheriff shall execute our said writ let him certify to you, so that you may make known the same to us immediately after the execution thereof wheresoever, &c.

When Judge certifies for immediate Execution.

Victoria, &c., to the Sheriff of *W.*, greeting: Whereas on the day of , in the year of our reign, a certain cause wherein *John Doe* on the demise of *H. A.* was plaintiff and *C. D.* was defendant, was tried at , before Sir E. H. Alderson, Knt., one of the justices assigned to take the assizes in and for the said county, for the recovery of the possession of his the said *John Doe's* term then and yet to come of and in two messuages, &c. [*as in declaration*], with the appurtenances, situate at, &c. in your bailiwick, and on the trial of which said cause a verdict was given for the said *John Doe*, [*or "the said John Doe was nonsuited for want of the said C. D. appearing to confess lease, entry, or release,"*] and the said Sir E. H. Alderson, Knt., having certified his opinion on the back of the record that a writ of possession ought to be issued immediately in the said cause, therefore we command you that without delay you cause the said *John Doe* to have the possession of his said term yet to come of and in the tenements aforesaid with the appurtenances; and in what manner you shall have executed this our writ make appear to us, &c. [*conclude as ante*, 268].

In the older books (*e*) it is said that the plaintiff might enter, when he could do so without force, without suing forth a writ of possession, and that the assistance of the Sheriff was only to preserve the peace; but this doctrine has recently (*f*), with good reason, been called in question. As regards this action the old rule was, that the Sheriff was to be informed by the record itself what he was to take possession of; but the Sheriff now delivers possession at the showing of the plaintiff *and at the peril of the plaintiff*, who is at his peril to take possession of no more than he is entitled to (*g*); and the Sheriff is not bound to execute the writ unless the lessor of the plaintiff, or some person autho-

A writ of possession must issue.

Of what, how, and at whose risk the Sheriff gives possession. Sheriff should call for an indemnity.

(*e*) 12 Mod. 398; 1 Burr. 88.

(*f*) *Stephens v. Lord*, not yet reported, *Patteson, J.*

(*g*) *Queen v. Aylesworth*, Sav. 28; *Connor v. West*, 5 Burr. 2672.

rized by him, comes to receive possession, nor is he bound to know or seek the land (*h*); being so the Sheriff will do well in all cases to call upon the lessor of the plaintiff for an indemnity before he executes the writ.

Outer door may be broken after request, &c. Posse comitatus.

In executing this writ the outer door of a party's dwelling-house may be broken open by the officer after signifying the cause of his coming, and making request that the doors may be opened; he may take the *posse comitatus* if he meet with resistance.

How executed when there are several tenements.

If several tenements (the subject matter of the action) be in the possession of several tenants, the officer must give possession of each separately; of one in the name of all is not sufficient (*i*); but if all be in the possession of one tenant it is said to be sufficient to deliver possession of one in the name of all (*k*); but the surest and best way is for the Sheriff to remove all the tenants entirely out of *each* house, and when the possession is quitted to deliver it to the plaintiff. The goods must then also be removed (*l*).

Must remove all persons and goods off the premises.

How possession of a house given.

Of a rent or common.

As the end of the writ is to give the party full and actual possession he must remove all persons and their goods from off the premises; if persons be left on the premises the execution is not complete (*m*). If there is a recovery of a house the Sheriff may put the party in possession by delivering to him the ring of the door of the house, or any open door, and bid him enter and take possession, provided no tenant be there (*n*); if it be of a rent or common, possession may be delivered by word only (*o*); or in the former case by a twig, or grass, or sod of the same land, and this is a good seisin of the rent notwithstanding that the day of payment of the rent be not then come (*p*).

Where less is recovered

If a man upon an ejectment for forty acres of land recover thirty and not the residue upon the *hab. fac. poss.* the Sheriff

(*h*) Dalt. 255.

(*i*) 1 Roll. Abr. 886; Roll. Rep. 421; 2 Roll. Abr. 180.

(*k*) *Ibid.*

(*l*) Lutw. 1486; 1 Lev. 145.

(*m*) *Ibid.*; *Upton v. Wills*, 1 Leon.

145; Tidd's Pr. 1081, 8th edit.; Palm. 289.

(*n*) Park, 43; Impey, 194.

(*o*) Br. Seisin, pl. 36; 2 Ass. 24; Roll. Rep. 420; Bridgm. 56.

(*p*) Dalt. 255.

may deliver him three or more of the acres in the name of the whole without dividing it by metes and bounds (*q*). than ejectment brought for.

On recovery of land being part of a highway the Sheriff should deliver possession, subject to the public easement (*r*). Of a highway.

If the sheriff is to deliver possession of a certain number of acres, as to quantity *custom* and not statute is his guide (*s*). As to ad-measure-ment of land *custom* and not statute prevails. Excessive delivery how remedied.

If the Sheriff deliver possession of more than he ought, the Court will on application order it to be restored (*t*); but where crops are standing on the land when possession was taken under a hab. fac. poss., the Court refused to compel the lessor of the plaintiff to pay over to the late tenant (defendant) the value of the crops after deducting the rent (*u*).

The execution is not complete until the bailiffs are withdrawn and possession completely given (*x*); and if the tenant *immediately* after the Sheriff has given possession, ejects the plaintiff, the Sheriff may restore him to the possession, for the writ was not executed until the plaintiff has obtained full and quiet possession (*y*). When execution is complete.

Where a stranger turns the plaintiff out of possession after execution fully executed, the plaintiff is put to his new action or to an indictment for the forcible entry; if by the defendant himself the plaintiff may have either a new *habere facias* or an attachment (*z*).

When a Sheriff's officer, taking possession under a hab. fac. poss. is dispossessed before he delivers possession it is necessary that it should appear that the persons dispossessing are acting in concert with the defendant before a fresh writ can issue (*a*).

If *tested* before the death of the lessor of the plaintiff, though not sued out till after, it is regular (*b*). When suit abates by death of lessor of the plaintiff.

(*q*) 10 Vin. Abr. 539; Palm. 289.

(*r*) 1 Burr. Rep. 133.

(*s*) 1 Roll. Rep. 420.

(*t*) 1 Burr. Rep. 627; 5 Burr. 2673.

(*u*) *Doe d. Witherwich*, 3 Bing. 11.

(*x*) 6 Mod. 115; Leon. 145.

(*y*) Palm. 289.

(*z*) *Doe d. Pate v. Roe*, 1 Taunt. Rep. 55; 1 Keb. 779; Tidd, 1247; *ante*.

(*a*) *Doe d. Thompson v. Mirehouse*, 2 Dowl. 200.

(*b*) *Berger v. Roe*, 4 Burr. 1970.

By marriage.

So in an ejectment against a *feme sole*, who married before trial, and a verdict and judgment was obtained against her by her original name, it was holden regular to issue an *hab. fa. pos.* against her by the same name (*c*).

By death of the real defendant.

If the real defendant dies after judgment and before execution, it is said that an *hab. fac. poss.* may be issued and executed, because execution is of the land only, and there is no new person to be charged (*d*); a *sci. fa.* (the parties being nominal) will not lie in any case perhaps absolutely necessary (*e*), but as some doubts exist about the point (*f*), a *sci. fa.* should in prudence be issued (*g*).

Should be returned.

This writ should in strictness be *returned*; but in practice it is not usual unless the Sheriff be ruled so to do; the omission is not material as regards the validity of the execution (*g*); if returned it may be in this form.

Return.

Full possession given.

By virtue of this writ to me directed, I did on the day of in the year within written, give full and peaceable possession unto the within named *John Doe* of the messuages, &c. and premises, with the appurtenances within mentioned, as within I am commanded.

The answer of *G. A. Esq.* High Sheriff.

Return.

If a *fi. fa.* be annexed and no goods.

And the within named *C. D.* hath not any goods or chattels in my bailiwick whereof I can cause to be levied the damages and costs within mentioned, or any part thereof.

Return (h).

A levy of goods.

I have levied and made of the goods and chattels of the within named *C. D.* to the value of £ , being the damages and costs within mentioned, which money I have ready.

Return, that no one came to show (i).

By virtue of this writ to me directed, I have been always ready and willing to deliver the possession of the premises within mentioned to the within named *John Doe*, with the appurtenances, as I am commanded;

(*c*) *Jaggart v. Butcher*, 3 M. & S. 557.

(*d*) *Withers v. Harris*, 2 Ld. Raym. 808; but see *Adams' Eject.* 307; and see 2 Sellon, 204.

(*e*) Tidd's Pr. 1171.

(*f*) *Vide* Woodfall, 3d edit. p. 839.

(*g*) Dalt. 179, 256.

(*h*) If a *ca. sa.* be added to the writ of possession the Sheriff returns "*cepi corpus*," or "*non est inventus*" (as the case may be) to the former.

(*i*) Roll. Abr. *Return* (H.); *Floyd v. Bethell*, Dalt. 539; *ante*, 269.

but that no one came to me on the part of the said *John Doe* to show the same premises to me or any part thereof, or to receive the possession thereof, or any part thereof, from me.

The answer of *G. A. Esq.* High Sheriff.

That he was ready on a *certain day*, and that he gave notice is not a good return, *Roll. Abr. Return*, (1); that there is no such land is bad, 5 Hen. 7, c. 27 : that the writ could not be executed because he was opposed by force is bad, because he should raise the posse comitatus ; 1 Str. 432 ; Noy, 40 ; Sav. 28 ; *tardè* appears to be a good return, *Ret. Br.* 352 : so *mandavi ballivo* to a writ without a non omittas clause is a good return. As to a *view* see Co. Litt. 158 ; Dalt. 256 ; Bro. *View*, 39. The Sheriff may also return that he offered to the demandant possession, but he refused to take it, Dyer, 278. That the Sheriff was tenant to the land and therefore he could not serve the writ ; Br. Ret. 46.

Other returns.

For costs and damages the lessor of the plaintiff may have a separate writ of fi. fa. or ca. sa. (1), or he may have the fi. fa. or ca. sa. added to the hab. fa. poss. in the same writ.

Execution for costs and damages.

Hab. fa. Poss. and Fi. fa. united.

Victoria, &c. [*copy the hab. fa. poss. verbatim, and then thus:*] We also command you, that of the goods and chattels of the said *C. D.* in your bailiwick you cause to be made £ . which the said *John Doe* lately in our said Court recovered against the said *C. D.* for his damages which he had sustained, as well on occasion of the trespass and ejectment [or "trespasses and ejectments"] aforesaid, as for his costs and charges by him about his suit in that behalf expended ; whereof the said *C. D.* is also convicted, as appears to us of record : and have you the said monies before us, ["before our justices or barons at Westminster,"] on , wheresoever we shall then be in England, to be rendered to the said *John Doe* for his damages aforesaid ; and have there this writ. Witness, &c.

A writ of restitution may in some cases be awarded ; thus when an irregular judgment was set aside and the possession ordered to be restored, but the rule became ineffectual in consequence of the lessor of the plaintiff having absconded, a writ of restitution was awarded (m). A judge's order directing the

Writ of restitution.

Judges' order to restore possession.

(1) If a separate fi. fa. or ca. sa. be issued, (which may be necessary if there be no certificate for them, ante, 231,) the form is the ordinary one, saying only, "by reason of a certain trespass and ejectment, [or "certain trespasses and ejectments,"] then lately committed by the said *C. D.*"

The defendant, be it observed, cannot have a writ of execution for his costs if he have a verdict, or the plaintiff be nonsuited or nonprossed ; he must proceed by attachment on the consent rule ; see 2 Ch. Arch. 796, 6th edit.

(m) 2 Sell. Pr. 204.

Sheriff to restore possession is irregular; the order must be on the party in possession (*n*).

SECTION IV.

ACCEDAS AD CURIAM (*a*).

Victoria, &c., to the Sheriff of *W.*, greeting: We command you that taking with you four discreet and lawful knights (*b*) of your county, you go in person to the Court of , and in Court there you cause the plaint to be recorded which is in that Court without our writ *in debt*, brought by the said *J. S.* against the said *G. M.*, as it is said; and that you have that record before our justices at Westminster, on , under your seal and the seals of four lawful knights of the same county, of such as shall be present at that recording; and prefix the same day to the parties aforesaid, that then they may be there to proceed in the same plaint as shall be just; and have there the names of the said four knights and this writ. Witness, &c.

Sheriff's Precept.

To *A. B.*, steward and bailiff of the manor of *P.*
Cumberland, } I, *G. A.*, Esq., High Sheriff of the county aforesaid, by
to wit. } virtue of her Majesty's writ of *accedas ad curiam* to me
directed and delivered, do command you that taking with you four discreet and lawful *men* (*c*) of your county, you cause the plaint to be recorded which is in your Court there without our writ *in debt*, brought by the said *J. S.* against the said *G. M.* as it is said; and that you certify that record to me so that I may have the same before, &c., on, &c., under your seal and the seals of four lawful men of the same county, of those who shall have been present at the recording.

By the Sheriff.

(*n*) *Doe d. Williams v. Williams*, 2 Ad. & E. 381; as to the *præcipe*, seating, signing, form of writ, &c. *ibid.*

(*a*) This writ lies for the removal of plaints out of the Court of a franchise, or hundred, or Court Baron, or the like (being no Court of record).

It is issued out of Chancery, and is executed by directing a precept in the form set forth in the text, to the steward and suitors of the Court, commanding them to return the plaint to the Sheriff, and to prefix a day to the parties to appear, and thereupon the Sheriff returns the *accedas ad curiam*

with the plaint, &c. annexed; Greenwood, 61; Fitz. Nat. Brev. 71—119; Plowd. 74; Finch. 444. Note—the writ cannot be had without showing some special cause for the removing of it, as that a *freehold* is in question there, or some foreign plea pleaded not triable in that Court; *ibid.*; but this is mere matter of form, and never inquired into at this day.

(*b*) Greenwood, 61, uses the words “*quatuor discretis et legalibus liberis tenentibus*,” anglicè “Freeholders.”

(*c*) *Post*, p. 275, n. (*d*).

Return (d).

Westmorland, } Court Baron of , lord of the manor of in
 } to wit. } the said county, holden at , in and for the said
 manor, on the day of , 1839, before J. A. steward of the
 said Court.

R. S. complains of C. D., &c. (*Pleadings.*)

J. A., Steward.

J. H., T. H. }
 J. G., R. H. } Suitors.

By virtue of this writ to me directed, I did go to the Court within written, and in full Court there I caused to be recorded the plaint within written, which record I have (as appears in the schedule to this writ annexed) before , on the day and at the place within contained, under my seal and the seals of T. R., A. B., C. D., and E. P., four lawful men of my county, who in the same Court were present at that recording, and I prefixed the same day to the parties aforesaid, that then they might be there to proceed in the said plaint as was just, as within I am commanded.

The answer of G. A., Esq., High Sheriff.

SECTION V.

HABEAS CORPUS.

There are several writs of habeas corpus for a subject when he is deprived of his liberty. But the great and efficacious writ in all manner of illegal confinement is that of *habeas corpus ad subjiciendum*, directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, *ad faciendum, subjiciendum, recipiendum*, to do, submit to, and receive whatsoever the judge or Court awarding such writ shall consider in that behalf^(a); but before proceeding to the writ above alluded to, a few observations upon others, in which the Sheriff is interested, may not perhaps be out of place.

(d) It is a good return for the Sheriff to state that, after the receipt of the writ, and before the return thereof, no Court was holden, and that he also required the lord to hold his Court, which he refused to do; Greenwood, 63; Fitz. *Return*, 21; Dalt. 243. The persons who go with him need not be knights; but *semble*, it should be stated to be so; Fitz. Nat. Br. 10; Greenw, 63; *sed vide* 3 Anst. 408; it seems

to be a good return that the suitors refused to record the plea, or to deliver to him the record, or denied that there was any such record; in such cases the Court above would award a *distringas* directed to the Sheriff against the suitors, with a summons against the party; Dalt. 243; Watson, 294.

(a) 8 State Trials, 142.

HABEAS CORPUS CUM CAUSA (b).

Victoria, &c., to the Sheriff of *W.*, greeting: We command you that you have the body of *C. D.* detained in our prison under your custody as it is said, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, before our right trusty and well-beloved Thomas Lord Denman [*as the case may be*], our chief justice assigned to hold pleas in our Court before us, at his chambers in Rolls' Gardens, Chancery Lane, London, immediately after the receipt of this writ, to do and receive all and singular those things which our said chief justice shall then and there consider of him in this behalf; and have there then this writ. Witness, &c.

Warrant to Gaoler.

Cumberland, } *G. A.*, Esq., High Sheriff of the said county, to *Thomas*
to wit. } *Thwaites*, my bailiff, and also keeper of her Majesty's
gaol in and for the said county, by virtue of her Majesty's writ to me directed, I command you that you have the body of *R. P.* before Thomas Lord Denman, chief justice of our lady the Queen, before the Queen herself, at his chambers in Rolls' Gardens, Chancery Lane, London, immediately after the receipt of this your warrant, to do and receive what the Queen's chief justice shall then and there consider of him in this behalf. Hereof fail not at your peril. Given, &c.

By the same Sheriff.

Return thereto (c).

Cumberland, } *I, G. A.*, Esq., High Sheriff of the said county, do
to wit. } humbly certify and return to the Right Honourable Thomas Lord Denman, her Majesty's chief justice, in the writ to this sche-

(b) This writ cannot be directed to the Sheriff or gaoler, in the disjunctive; *Rex v. Fowler*, 1 Salk. Rep. 350.

This writ may be *sued* out in term or vacation without any previous motion made; but although sued out in vacation it must bear *te-te* in term; it may be made *returnable immediate*—which means within due and convenient time; *Bettesworth v. Bell*, 3 Burr. Rep. 1876; it must be signed with the proper hands of the chief justice, or, in his absence, of one of the justices of the Court, out of which the same writ shall be awarded or made; 1 & 2 Phil. & M. c. 13, s. 7, *vide* Salk. Rep. 150; 2 Str. Rep. 895; 12 Mod. 2; 2 Lord Raym. 1379; if not so signed the Sheriff is not bound to execute it; *Rex v. Rodham*, Cowp. 672. See also *Sheppard v. Shem*, 2 Cr. & J. 632.

If the Sheriff do not obey the first

writ in convenient time, he will not only be subject to the penalties in the 31 Car. 2, but, after being ruled to return it, to an attachment for his contempt, such mode of punishment being within the spirit of the statute referred to; *Rex v. Wright*, 2 Str. Rep. 915; *Rex v. Winton*, 5 Term Rep. 89.

(c) As a writ of *habeas corpus cum causa* is in nature of a writ of right or writ of error, to determine whether the imprisonment be good or erroneous, the cause of the imprisonment ought to appear as certainly to the judge before whom it is returned as it did to the Court or person authorized to commit; Vaugh. 137; so the return must state the day, and also the cause depending against him, and in extrajudicial commitments, the warrant of commitment; all writs of execution is *hec verba*, and with a *paratum habeo*, that the judge may either discharge,

dule annexed, that before the said writ came to me (that is to say) on the day of , in the year within written, C. D. in the said writ named was taken, and in her Majesty's gaol for the said county under my custody is detained by virtue of a writ of *capias ad satisfaciendum*, which said writ follows in these words: Victoria, &c. [*here set forth the writ and all indorsements verbatim, and conclude thus*]: and these are the causes of the taking and detaining the said C. D., which together with his body I have ready, as by the said writ I am commanded.

Indorse on the writ "The execution of this writ appears in the schedule hereunto annexed.

The answer of G. A., Esq., High Sheriff."

Return of Cepi et Languidus in Prison.

By virtue of this writ to me directed, I on took the within named C. D., who remains in her Majesty's prison of A. under my custody so languid that, without great peril and danger of his life, I cannot have his body before our lady the Queen at the day and place within contained, as within I am commanded.

The answer of G. A., Esq., High Sheriff.

HABEAS CORPUS AD SATISFACIENDUM (d).

Victoria, &c.: We command you that you have before us, at West-

bail, or remand the prisoner; 5 Mod. 156; 2 Cro. 543; 12 Co. 130; Hale, P. C. 584; Skin. 676, pl. 2.

When a man is taken on a warrant of the Sheriff, *the writ itself must be returned*; otherwise it is when one is committed to the gaol immediately, as in cases criminal; *Rex v. Fowler*, 1 Salk. Rep. 350.

It is a good return that the party is dead; *Dalt.* 219, 251; he may return *cepi et languidus*; *ibid.* 250; or that he is in custody for *felony, murder, treason*, or the like; *ibid.* 252; *outlawed, excommunicated*, or committed by a *mittimus* from a justice, or by an order of sessions, or commissioners of bankrupts; see *Officina Brev.* 235; in these cases set forth the warrant in *hæc verba*; see "*Returns*" in 1 Salk. Rep. 347, 351.

But he cannot return that he was resisted, for he may raise the *posse comitatus*; 2 Inst. 454; 13 Edw. 1, c. 39, in *Compton v. Ward*, 1 Str. Rep. 429; as to the gaoler's fees, see *Keb.* Rep. 280; in *re Salisbury*, 5 Barn. & Ald. 266.

Return—"I had not at the time of receiving this writ, nor have I since

had the body of A. B. detained in my custody, so that I could not have her, &c." was held a bad return; *Rex v. Winton*, 5 Term Rep. 89.

For a return where defendant was in custody of the old Sheriff, and return made by the new, see *Impey*, 523, substituting the words "*a true and correct list and account under his hand*," instead of "*indenture*," by which formerly the assignment of prisoners, &c. was made from the old to the new Sheriff; *ante*, p. 26.

In executing this writ the officer should not deviate from the direct road nor allow his prisoner to go at liberty, if he do it will amount to an escape; *Roll. Abr. Escape*, D. 9.

On a rule for discharging a prisoner who was arrested under process from an inferior Court, and brought up into the Q. B. by *habeas corpus cum causa*, it is no objection that the affidavits on which the rule is obtained are intitled in a cause in the Q. B.; *Perrin v. West*, 3 Adol. & E. 405; 5 Nev. & M. 291.

(d) This writ is directed to the same person as the *habeas corpus cum causa*, to bring the body into Court, with the causes of his detainer, &c.,

minster, the body of *C. D.* detained in our prison under your custody, as we are informed, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called in the same, to satisfy as well a certain debt, [*or in assumpsit, &c.* "the sum of £ ;"] which in our Court before us, at Westminster, were awarded to the said *A. B.* for, &c. [*as in the ca. sa.*], whereof the said *C. D.* is convicted; and further to do, &c. [*conclude as ante*, p. 276.]

Return thereto (e).

Westmorland, } I, the within-named Sheriff of the said county, do
to wit. } hereby certify that before the coming of this writ to me directed, to wit, on , the common gaol in and for the said county at *A.*, and in which the said *C. D.* was then detained, was destroyed by fire, which I could not prevent, and the said *C. D.* escaped and is still at large, against my will and consent: wherefore the body of the within-named *C. D.* before, &c., at the day within written, I cannot have as I am within commanded. *G. A., Esq., High Sheriff.*

Indorsement on Writ.

The execution of this writ appears in the schedule hereunto annexed.
The answer of *G. A., Esq., High Sheriff.*

HABEAS CORPUS AD TESTIFICANDUM (*f*).

Præcipe.

Westmorland, } Habeas corpus ad testificandum between *A. B.* plain-
to wit. } tiff and *C. D.* defendant, on the part of the plaintiff,
, 1839. } *M. A.,* plaintiff's attorney.

which being obeyed the Court commit him to the marshal or warden as the writ directs.

It is used for bringing a prisoner in the Marshalsea or Fleet, or in the prison of any inferior Court, into the Court in which judgment is obtained, in order to charge him in execution.

Note—Where the defendant is in the Sheriff's custody the proper mode of charging him in execution is by a *ca. sa.*, and the Court will not in general grant this writ; *Williams v. Jones*, 2 Cr. & J. 611; see also *Brandon v. Davis*, 9 East, Rep. 154; *Guthrie v. Ford*, 4 D. & R. 271, where the Court has refused the writ; it lies as well for a defendant as for a plaintiff; *Furnival v. Stringer*, 5 Dowl. 195.

The writ must bear *teste* in term, and be returnable in Court upon a

day certain; it need not be marked or indorsed with the term and number of the judgment roll as formerly; 5 Dowl. 195; 3 Scott, 551.

(*e*) For "*returns*," "*warrant to gaoler*," "*execution*," &c., see *ante*, p. 277.

(*f*) If a witness be in custody on *mesne* or final process, *Geery v. Hopkins*, 2 Ld. Raym. 851, the only way of obtaining his testimony as a witness is to bring him into Court by a writ of *habeas corpus ad testificandum*.

By 44 Geo. 3, c. 102, any judge of the superior Courts in England [Wales] or Ireland may award writs of *habeas corpus* for bringing prisoners before Courts of record to be examined as witnesses.

It is obtained in Court or at chambers upon an affidavit that the pri-

Affidavit to obtain Writ.

In the Q. B.

Between { A. B. Plaintiff,
and
C. D. Defendant.

G. A., of attorney for the above-named plaintiff, maketh oath and saith, that this cause is set down for trial at the assizes to be holden in and for the county of W., [or as the case may be,] and that S. B. now a prisoner for debt in the county gaol of W. is and will be a material witness for this deponent at the trial of this cause: And this deponent further saith, that he is advised and verily believes that the said A. B. cannot safely proceed to the trial thereof without the testimony of the said S. B., and that he the said S. B. is ready and willing to attend as a witness at the trial of the said cause.

Sworn, &c.

G. A.

Writ.

Victoria, &c., to the Sheriff of W., greeting: We command you that you have the body of S. B. detained in our prison under your custody as it is said, under safe and secure conduct before , justices assigned to take the assizes in and for the county of W., on the day of next, by ten of the clock in the forenoon of the same day, then and there to testify the truth according to his knowledge in a certain cause now depending in our Court before us, and then and there to be tried between A. B. plaintiff, and C. D. defendant, in an action on promises, on the part of the said A. B., and immediately after the said S. B. shall then and there have given his testimony before , that you return him the said S. B. to our said prison under safe and secure conduct, and have there then this writ. Witness, &c.

HABEAS CORPUS AD SUBJICIENDUM (g).

It is said, by *Coke* and *Hale*, "that by virtue of the statute of Magna Charta, and indeed of the *common law*, an habeas corpus in *criminal* cases may issue out of the Chancery at all times of the year, even in the *vacation*; but that at common law neither the King's Bench nor Common Pleas could grant that writ but in *term time* (h)." By the Habeas Corpus Act, (31 Car. 2, c. 2,)

When and
whence is-
sued at
common
law.

Habeas
Corpus Act,
effect of.

soner is a material witness, and willing to attend, whereon the Court or judge exercise their discretion. In *R. v. Burbage*, 3 Burr. Rep. 1440, Lord Mansfield refused it, because he thought the application a mere contrivance. So in *Farley v. Newnham*, Dougl. 420 [403], the Court refused this writ to bring up a prisoner at war to be a witness, assigning for reason that it should be done by an order

from the secretary of state; see also 2 New Rep. 245.

(g) Form of writ, see *ante*, p. 276, adding "to submit to and receive;" see also the two Habeas Corpus Acts, 31 Car. 2, c. 2, and 56 Geo. 3, c. 100, printed in full, *post*, p. 282.

(h) Co. Litt. 81, 182; 2 Hale, P. C. 147; *Crowley's case*, 2 Swanst. 1, 48.

the previously existing power of the Chancellor to issue an habeas in *criminal* cases in *vacation*, was extended to the judges and barons of the other Courts at Westminster (i). But as that statute only applied to imprisonment for *crime* or *suspicion of crime*, it was found necessary to extend the power of issuing an habeas corpus in vacation to imprisonment *not for crimes*, which is done by the 56 Geo. 3, c. 100 (k). By the latter statute, upon complaint made by or on the behalf of the party confined or restrained, if it shall appear *by affidavit or affirmation that there is a probable and reasonable ground for such complaint*, any judge or baron of the Superior Courts is required by that act to issue it in *vacation*.

Extent of, and amendment of, by the 56 Geo. 3, c. 100.

How obtained.

How obtained, whether application is under the common law or the statutes.

Whether the application be at common law or on the statutes of 31 Car. 2, c. 2, and 56 Geo. 3, c. 100, it must be grounded on an *affidavit of a probable and reasonable ground for the complaint*, and that it is made *by or on the behalf of the person imprisoned* (l). The application must also be preceded by *his written request*, attested by two witnesses (m).

Who entitled to this writ.

On looking at the exceptions in the two statutes, it will be sufficiently clear who are and who are not entitled to this writ. By the 31 Car. 2, "any person committed or detained for any *crime* (unless for felony or treason plainly expressed in the warrant of commitment) is entitled to this writ." By the 56 Geo. 3, c. 100, "any person confined or restrained of his or her liberty, (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any

(i) See the advantages attending an application to the Court of *Queen's Bench* in preference to the other Courts when it can be done, Salk. Rep. 359; 2 Ch. Gen. Pr. 327. An application is seldom made to the Chancellor under the statute of Car. 2, except in cases depending in his own Court.

(k) As to the Chancellor's power in *vacation* under this statute, (though not expressly mentioned,) see the judgment of Lord Eldon in *Ex parte Crowley*, 1 Swanst. 1; Buck, 264, S. C. overruling *Jenkin's case*, in which Lord Nottingham was of a contrary opinion.

(l) Wilmot's Opinions and Judgments, 81; *Rex v John Cam Hob-*

house, 3 Barn. & Ald. 420; 2 Ch. Rep. 207; S. C. Tidd's Pr. 347; 3 Bl. Comm. 132; 4 Ch. Crim. Law, 121. In *criminal cases* a copy of the commitment, or an affidavit of the refusal of it, must be laid before him, *ibid.*; and the application should be supported by other evidence than the affidavit of the prisoner; 1 Leach, 255; Cald. 246.

(m) *Rex v Wiseman*, 2 Smith's Rep. 617; *Ex parte Lansdown*, 8 East, Rep. 38. It is usual to obtain at the same time a *writ of certiorari* from the Crown Office to the committing magistrate, requiring him to return the depositions, &c.

civil suit,) is entitled to this writ." It follows then that persons committed for felony or treason plainly expressed in the warrant, as well as persons convicted or in execution on legal process, are not entitled to this writ either in term or vacation (*n*). Who are not entitled to this writ.

A commitment of a lunatic, or one by the House of Commons for a contempt, is not for a *crime* within the 31 Car. 2 (*o*), nor a commitment by order of Court (*p*). An alien enemy cannot have the writ, although any other alien in general may (*q*); nor by the 7 Geo. 4, c. 48, s. 17, can prisoners for offences against smuggling and the customs, unless the *objection* to the proceedings be stated in the affidavit (*r*).

Nor can a prisoner have this writ for the purpose of bringing him to vote at an election (*s*).

The writ must be marked in this manner, "*per statutum tricesimo primo Caroli Secundi regis*," signed with the proper hand of the judge (*t*), and signed by the person who awards it. Necessary formulæ as to writ.

The writ, within three days after service, must be returned and the body brought if within twenty miles; if beyond the distance of twenty miles and not above one hundred, then within the space of ten days; if beyond the distance of one hundred miles, then within the space of twenty days (*u*). Execution of.

Return thereto (x).

I, Henry Earl of Thanet, High Sheriff of the county of *W.*, in the writ to this schedule annexed named, do certify and return to our sovereign lady the Queen, that before the coming to me of the said writ, that is to say, on the day of , in the year of our Lord 1839, *J. C. H.* in the said writ also named, was committed to my custody by virtue of a certain warrant of commitment to the tenor and effect following, [*warrant*

(*n*) Or "suspicion of treason," Palm. 558; Com. Dig. (*Habeas Corpus*, E. 2.)

(*o*) Com. Dig. (*Habeas Corpus*, C.); *Ex parte Allen*, 3 Nev. & M. 35. *Burdett v. Abbott*, 14 East. Rep. 1; *Rex v. Hobhouse*, 3 Barn. & Ald. 420.

(*p*) *Rex v. Flower*, 3 Term Rep. 324; *Burdett v. Abbott*, *suprà*.

(*q*) *Hottentot Venus's case*, 8 East, 195.

(*r*) *In re Nunn*, 8 Barn. & Cr. 644.

(*s*) *Ex parte Jones*, 2 Ad. & E. 436; 4 N. & M. 340.

(*t*) *Rex v. Roddam*, Cowp. Rep. 672.

(*u*) 32 Car. 2, c. 2, s. 2, Sheriff's warrant, *ante*, p. 276.

(*x*) See another form of return, *Lyons v. Blenkin*, 1 Jacob's Rep. 247; the one in the text is mainly taken from the one reported in 2 Chitty's Rep. 207, the case of *John Cum Hobhouse*.

verbatim,] and these are the causes of the detaining of the said J. C. H., whose body I have here ready, as by the said writ I am commanded.

Henry Earl of Thanet, High Sheriff.

Indorsement thereon.

The execution of this writ appears in a certain schedule hereunto annexed.

The answer of Henry Earl of Thanet, High Sheriff.

The return must show by whom and for what cause the prisoner was committed (*y*). The return may be enforced by attachment (*z*).

Return, how enforced.
Return, certainty of.
Special return of facts instead of body.

It follows from what has been before stated, that there are many cases in which the Sheriff, or other person to whom the writ is directed, is warranted in returning, instead of the body, the causes or reasons of the prisoner's detention; thus, in the case of a person charged with treason or suspicion of treason, or felony, or in execution upon process after judgment from any Court of competent jurisdiction, the facts should be returned specially.

Return, when disputable.

In *criminal* (*a*) cases it is said that the return cannot be disputed, but in offences which rather partake of a *civil* nature, the truth of the return may be denied (*b*); so where the writ is issued at common law, the truth of the return may be controverted (*c*).

When amended.

After the return is filed it becomes a record of the Court and cannot be amended; before, it may, it seems, in form or substance (*d*).

HABEAS CORPUS ACT.

(31 Car. 2, c. 2.)

"WHEREAS great delays have been used by Sheriffs, gaolers and other officers, to whose custody any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed, by standing out an alias and pluries habeas corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known

(*y*) Com. Dig. (*Habeas Corpus*, E. 2,) *vide ante*, p. 276.

(*z*) *Rex v. Ferrers*, 1 Burr. Rep. 631; *Crowley's case*, 2 Swanst. 73; *Rex v. Winton*, 6 Term Rep. 89; 2 Smith's Rep. 588.

(*a*) Hawk. P. C. c. 2.

(*b*) *Ex parte Beeching*, 4 B. & Cr. 136, n.

(*c*) *Ibid.*; 56 Geo. 3, c. 100, s. 4.

(*d*) 1 Mod. Rep. 102.

laws of the land, whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation :'

2. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority thereof, that whensoever any person or persons shall bring any habeas corpus directed unto any Sheriff or Sheriffs, gaoler, minister or other persons whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under-keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and indorsed upon the said writ, not exceeding twelve-pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of the present act, and that he will not make any escape by the way, make return of such writ; and bring or cause to be brought the body of the party so committed or restrained, unto or before the Lord Chancellor or Lord Keeper of the Great Seal of England for the time being, or the judges or barons of the said Court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such Court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer.

3. And to the intent that no Sheriff, gaoler or other officer may pretend ignorance of the import of any such writ; be it enacted by the authority aforesaid, that all such writs shall be marked in this manner *per statutum tricesimo primo Caroli Secundi Regis*, and shall be signed by the person that awards the same; and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process) or any one on his or their behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the exchequer of the degree of the coif; and the said Lord Chancellor, Lord Keeper, justices or barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her or their behalf, attested and subscribed

Writs of habeas corpus within three days after service to be returned, and the body brought, if within twenty miles, &c.

Such writs how to be marked.

Writs of habeas corpus, and the proceedings thereon in vacation time.

by two witnesses who were present at the delivery of the same, to award and grant an habeas corpus under the seal of such court whereof he shall then be one of the judges, to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said Lord Chancellor or Lord Keeper, or such justice, baron or any other justice or baron of the degree of the coif of any of the said courts; and upon service thereof as aforesaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor or Lord Keeper, or such justices, barons or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the Court of King's Bench the term following, or at the next assizes, sessions or general gaol delivery, of and for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances into the said Court where such appearance is to be made; unless it shall appear unto the said Lord Chancellor or Lord Keeper, or justice or justices, or baron or barons, that the party so committed is detained upon a legal process, order or warrant, out of some Court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, for such matters or offences for the which by the law the prisoner is not bailable.

Persons neglecting two terms to pray a habeas corpus. 4. Provided always, and be it enacted, that if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a habeas corpus for his enlargement, such person so wilfully neglecting shall not have any habeas corpus to be granted in vacation time, in pursuance of this act.

Officers not obeying such writ. 5. And be it further enacted by the authority aforesaid, that if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person* in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of 100*l.*; and for the second offence the sum of 200*l.*, and shall and is hereby made incapable to hold or execute his said office; the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any

[* *Sic Rot.*]

Second offence.

of the King's Courts at Westminster, wherein no essoign, protection, privilege, injunction, wager of law, or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance; and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

6. And for the prevention of unjust vexation by reiterated commitments for the same offence: be it enacted by the authority aforesaid, that no person or persons which shall be delivered or set at large upon any habeas corpus, shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever, other than by the legal order or process of such Court wherein he or they shall be bound by recognizance to appear, or other Court having jurisdiction of the cause; and if any other person or persons shall knowingly contrary to this act, recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned, for the same offence or pretended offence, any person or persons delivered, or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of 500*l.*; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

Persons set at large not to be recommitted but by order of Court.

Penalty.

7. Provided always and be it further enacted, that if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court the first week of the term, or first day of the sessions of oyer and terminer or general gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer or general gaol delivery, after such commitment; it shall and may be lawful to and for the judges of the Court of King's Bench and justices of oyer and terminer or general gaol delivery, and they are hereby required, upon motion to them made in open court the last day of the term, sessions or gaol delivery, either by the prisoner or any one on his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices upon oath made, that the witnesses for the King could not be produced the same term, sessions or general gaol delivery; and if any person or persons committed as aforesaid, upon his prayer or petition in open court the first week of the term or first day of the sessions of oyer and terminer and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

Persons committed for treason or felony, shall be indicted the next term, or let to bail.

And tried the term, &c. after or discharged.

8. Provided always, that nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit.

9. Provided always, and be it enacted by the authority aforesaid, that if any person or persons, subjects of this realm, shall be committed to any prison or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers; unless it be by habeas corpus or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer to carry

Persons committed for criminal matter.

- Warrant unduly counter-signed. Penalty.
- such prisoner to some common gaol; or where any person is sent by order of any judge of assize or justice of the peace, to any common workhouse or house of correction; or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law; or in case of sudden fire or infection, or other necessity; and if any person or persons shall after such commitment aforesaid make out and sign, or countersign any warrant or warrants for such removal aforesaid, contrary to this act; as well he that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.
- Lord Chancellor, &c. denying habeas corpus. Penalty.
10. Provided also, and be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their habeas corpus as well out of the High Court of Chancery or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them; and if the said Lord Chancellor or Lord Keeper, or any judge or judges, baron or barons for the time being, of the degree of the coif, of any of the courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of habeas corpus by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved the sum of 500*l.*, to be recovered in manner aforesaid.
- Where habeas corpus shall run.
11. And be it declared and enacted by the authority aforesaid, that an habeas corpus, according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque ports, or other privileged places within the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, and the islands of Jersey or Guernsey; any law or usage to the contrary notwithstanding.
- No subjects shall be sent to foreign prisons.
12. And for preventing illegal imprisonments in prisons beyond the seas; be it further enacted by the authority aforesaid, that no subject of this realm that now is, or hereafter shall be an inhabitant or resident of this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands or places beyond the seas, which are or at any time hereafter shall be within or without the dominions of his Majesty, his heirs or successors; and that every such imprisonment is hereby enacted and adjudged to be illegal; and that if any of the said subjects now is or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain by virtue of this act an action or actions of false imprisonment, in any of his Majesty's Courts of record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment or transportation, or shall be advising, aiding or assisting in the same, or any of them; and the plaintiff in every such action shall have judgment to recover his treble costs, besides damages, which damages so to be given, shall not be less than 500*l.*; in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privilege whatsoever, nor any more than one imparlance shall be allowed, excepting such rule of the court wherein the action shall depend, made in
- Action of false imprisonment.
- Costs, damages.

open court, as shall be thought in justice necessary, for special cause to be expressed in the said rule; and the person or persons who shall knowingly frame, contrive, write, seal or countersign any warrant for such commitment, detainer or transportation, or shall so commit, detain, imprison or transport any person or persons contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said realm of England, dominion of Wales, or town of Berwick-upon-Tweed, or any of the islands, territories or dominions thereunto belonging; and shall incur and sustain the pains, penalties and forfeitures limited, ordained and provided in and by the statute of provision and præmunire made in the sixteenth year of King Richard the Second; and be incapable of any pardon from the King, his heirs or successors, of the said forfeitures, losses or disabilities, or any of them.

Persons
sealing war-
rant, &c.

Penalty.

16 R. 2,
c. 5.

13. Provided always, that nothing in this act shall extend to give benefit to any person who shall by contract in writing agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such agreement, although that afterwards such person shall renounce such contract.

Exception.

14. Provided always, and be it enacted, that if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act, or any thing therein contained to the contrary notwithstanding.

Exception.

"Imprisonments before the 1st of June, 1679, excepted, s. 15."

16. Provided also, that if any person or persons at any time residing in this realm, shall have committed any capital offence in Scotland or Ireland, or any of the islands, or foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial, in such manner as the same might have been used before the making of this act; any thing herein contained to the contrary notwithstanding.

Where of-
fenders may
be sent to
be tried.

17. Provided also, and be it enacted, that no person or persons shall be sued, impleaded, molested or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within two years at the most after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

Prosecu-
tions for
offences
within what
time to be
made.

18. And to the intent no person may avoid his trial at the assizes or general gaol delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there; be it enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any habeas corpus granted in pursuance of this act, but upon any such habeas corpus shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

After the
assizes pro-
claimed, no
prisoner to
be removed,
but before
the judge of
assize.

19. Provided nevertheless, that after the assizes are ended, any person or persons detained, may have his or her habeas corpus according to the direction and intention of this act.

20. And be it also enacted by the authority aforesaid, that if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue,

In suits for
offence
against this
law. the de-

defendants
may plead
the general
issue, &c.

that they are not guilty, or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit or action, and the said matter shall be then as available to him or them to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alleged the same matter in discharge of such information, suit or action.

Accessaries,
before the
fact, to
petty trea-
son or
felony.

21. 'And because many times persons charged with petty treason or felony, or as accessaries thereunto, are committed upon suspicion only, whereupon they are bailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county;' be it therefore enacted, that where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

HABEAS CORPUS ACT.

(56 Geo. 3, c. 100.)

31 Car. 2,
c. 2.

Irish Act,
21 & 22
G. 3.

Judges to
issue, in va-
cation, writs
of habeas
corpus re-
turnable im-
mediate-
ly, in cases
other than
for criminal
matter, or
for debt.

"WHEREAS the writ of habeas corpus hath been found by experience to be an expeditious and effectual method of restoring any person to his liberty, who hath been unjustly deprived thereof: And whereas extending the remedy of such writ, and enforcing obedience thereunto, and preventing delays in the execution thereof, will be advantageous to the public: And whereas the provisions made by an act passed in England in the thirty-first year of King Charles the Second, intituled *An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas*, and also by an act passed in Ireland in the twenty-first and twenty-second years of his present Majesty, intituled *An Act for better securing the Liberty of the Subject*, only extend to cases of commitment or detainer for criminal or supposed criminal matter;" Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within that part of Great Britain called England, dominion of Wales, or town of Berwick upon Tweed, or the Isles of Jersey, Guernsey or Man, it shall and may be lawful for any one of the barons of the Exchequer, of the degree of the coif, as well as for any one of the justices of one bench or the other; and where any person shall be so confined in Ireland, it shall and may be lawful for any one of the barons of the Exchequer, or of the justices of one bench or the other in Ireland; and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award in vacation time, a writ of habeas corpus ad subjiciendum, under the seal of

such Court, whereof he or they shall then be judges or one of the judges, to be directed to the person or persons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the Court under the seal of which the said writ issued.

2. And be it further enacted by the authority aforesaid, that if the person or persons to whom any writ of habeas corpus shall be directed according to the provision of this Act, upon service of such writ, either by the actual delivery thereof to him, her or them, or by leaving the same at the place where the party shall be confined or restrained, with any servant or agent of the person or persons so confining or restraining, shall wilfully neglect or refuse to make a return or pay obedience thereto, he, she or they shall be deemed guilty of a contempt of the Court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal, for the apprehending and bringing before him, or before some other justice or baron of the same Court, the person or persons so wilfully disobeying the said writ, in order to his, her or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the Court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing, to the gaol or prison of the Court of which such justice or baron shall be a judge, there to remain until he, she or they shall have become bound as aforesaid, or shall be discharged by order of the Court in term time, or by order of one of the justices or barons of the Court in vacation; and the recognizance or recognizances to be taken thereupon shall be returned and filed in the same Court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged: Provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the Court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said Court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said Court: Provided also, that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said countries respectively, which last mentioned Court shall have like power to award such writs as the respective Courts of King's Bench and Common Pleas in each of the said countries now have in term, but so late that, in the judgment of the Court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said Court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in Ireland, before any justice or baron of the same Court, who shall and may proceed thereupon, in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

3. And be it further enacted by the authority aforesaid, that in all

Non obedience to such writ, to be a contempt of Court.

Punishment.

Judges to make writs of habeas corpus, issued in vacation, returnable in Court in the next term. Proviso.

Courts to make writs issued in term, returnable in vacation.

Judges to

inquire into the truth of facts contained in return.

Judge to bail on recognizance to appear in term, &c.

Court to examine into the truth of facts set forth in return.

Court may controvert truth of return.

Writ may run into counties palatine, cinque ports and privileged places, &c.

Process of contempt may be awarded in vacation against persons disobeying writs of habeas corpus in cases within stat. 31 Car. 2, c. 2.

cases provided for by this Act, although the return to any writ of habeas corpus shall be good and sufficient in law, it shall be lawful for the justice or baron before whom such writ may be returnable, to proceed to examine into the truth of the facts set forth in such return, by affidavit or by affirmation (in cases where an affirmation is allowed by law) and to do therein as to justice shall appertain; and if such writ shall be returned before any one of the said justices or barons, and it shall appear doubtful to him on such examination, whether the material facts set forth in the said return, or any of them, be true or not, in such case it shall and may be lawful for the said justice or baron to let to bail the said person so confined or restrained, upon his or her entering into a recognizance with one or more sureties, or in case of infancy or coverture, or other disability, upon security by recognizance, in a reasonable sum, to appear in the Court of which the said justice or baron shall be a justice or baron, upon a day certain in the term following, and so from day to day as the Court shall require, and to abide such order as the Court shall make in and concerning the premises; and such justice or baron shall transmit into the same Court the said writ and return, together with such recognizance, affidavits and affirmations; and thereupon it shall be lawful for the said Court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law affirmation is allowed), and to order and determine touching the discharging, bailing or remanding the party.

4. And be it further enacted by the authority aforesaid, that the like proceeding may be had in the Court for controverting the truth of the return to any such writ of habeas corpus, awarded as aforesaid, although such writ shall be awarded by the said Court itself, or be returnable therein.

5. And be it declared and enacted by the authority aforesaid, that a writ of habeas corpus, according to the true intent and meaning of this Act, may be directed and run into any county palatine or cinque port, or any other privileged place within that part of Great Britain called England, dominion of Wales and town of Berwick upon Tweed, and the Isles of Jersey, Guernsey and Man, respectively; and also into any port, harbour, road, creek or bay upon the coast of England or Wales, although the same should be out of the body of any county; and if such writ shall issue in Ireland, the same may be directed and run into any port, harbour, road, creek or bay, although the same should not be in the body of any county; any law or usage to the contrary in anywise notwithstanding.

6. And be it further enacted by the authority aforesaid, that the several provisions made in this Act, touching the making writs of habeas corpus, issuing in time of vacation, returnable into the said Courts, or for making such writs awarded in term time, returnable in vacation, as the cases may respectively happen, and also for making wilful disobedience thereto a contempt of the Court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ, and in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to gaol as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings thereon, shall extend to all writs of habeas corpus awarded in pursuance of the said Act, passed in England in the thirty-first year of the reign of King Charles the Second, or of the said Act passed in Ireland in the twenty-first and twenty-second years of his present Majesty, and herein-

before recited, in as ample and beneficial a manner as if such writs and the said cases arising thereon had been hereinbefore specially named and provided for respectively.

SECTION VI.

DE LUNATICO INQUIRENDO.

The first proceeding in this case is to present a petition to the Lord Chancellor stating the party's incapacity and praying a commission, accompanied by affidavits of the lunacy of the party; whereupon the commission issues under the Great Seal (a). How obtained.

Upon notice, the Commissioner (b) therein named issues his precept to the Sheriff of the county where the party resides, directing him to summon twenty-four persons to inquire into the matters in question; they are to be of the neighbourhood and must consist of twelve at least and be unanimous in their finding. Commissioner issues his precept.

Precept to Sheriff (c).

By virtue of a commission in nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the day of last, to me whose name is hereunder written, directed to inquire whether *T. H.*, late of *B.*, and now residing at *C.*, be a lunatic or not.

These are therefore to will and require you to cause to come and appear before me, twenty-four, &c. on &c. at &c., then and there upon their oath to inquire of the lunacy of the said *T. H.*, and of all such other matters and things as shall be given them in charge by virtue of the said commission; and hereof fail not at your peril. A. B. (L. S.)

To the Sheriff of *W.*

Indorsement on Precept.

The execution of this precept appears in a certain panel hereunto annexed.

The answer of *G. A.*, Esq., High Sheriff.

Panel.

Devonshire, } The names of the jurors to inquire according to the tenor
to wit. } of the precept hereunto annexed.

1. *Gillery Pigott*, of , merchant.
2. *William Wood*, of , farmer.
- &c. &c.
24. *John Bradley*, of , shopkeeper.

G. A. Esq., High Sheriff.

(a) 2 Mad. Ch. Pr. 860, (3d edit.); 3 & 4 Will. 4, c. 36, s. 1.

(b) One commissioner now sufficient, 3 & 4 Will. 4, c. 36, s. 1.

(c) Highmore on Lunacy, 2 Madd. *supra*. The jury shall be of the neigh-

bourhood; *Ex parte Hall*, 7 Ves. 264; the abode is his mansion-house; if he has none, the place where he last resided, *ibid.*; see also *Ex parte Smith*, 1 Swanst. Rep. 4.

Oath to Foreman (d).

You shall well and truly inquire of all such matters and things as shall be given you in charge by virtue of her Majesty's commission now to you read, and a true verdict give according to the evidence.

So help you God.

Oath to the other Jurors.

The same oath that your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your parts.

So help you God.

Return of
commission
by whom
made.

The Commissioners and not the Sheriff return the Commission; it is signed by the jury and the Commissioners.

SECTION VII.

NE EXEAT REGNO.

In what
cases ori-
ginally and
now issued.

This writ was originally a state writ, but towards the latter end of the reign of King *James* the First, it was granted not only in respect of attempts prejudicial to the state but in other cases in aid of subjects (*a*).

By whom
issued.

It may be issued by the Lord Chancellor or Master of the Rolls (*b*), but not by the Court of Exchequer. The Court of Exchequer, however, may compel the party to give security, which has the like effect.

For what
issued.

It only issues when the demand is for a *certain equitable money demand* (*c*); that is, when there is no *legal* remedy, and the debtor cannot be holden to bail at law. For a balance of *account*, however, although he might be holden to bail at law, yet a *ne exeat regno* may still issue, for the Court in such a case has a concurrent jurisdiction.

Plaintiff
must be
within juris-
diction.

The plaintiff must be within the jurisdiction (*d*).

(*d*) These oaths are administered by the Sheriff.

(*a*) *Ex parte Brunker*, 3 P. Williams, 313, n.; *Dick v. Swinton*, 1 Ves. & B. 373. See also a very elaborate account of this writ in 2 Madd. Ch. Pr. title "Ne exeat regno."

(*b*) *Boehm v. Wood*, 1 Turn. & Russ. 343.

(*c*) 2 Madd. Ch. Pr. 278; and see *Hyde v. Whitfield*, 19 Ves. jun. 342; *Boehm v. Wood*, 1 Turn. & Russ. 343; *Whitehouse v. Partridge*, 3 Swanst. Rep. 377, n.

(*d*) 2 Madd. *suprà*. -

It issues to restrain a person from going to *Scotland* (e) or *Ireland* (f). As to Scotland and Ireland.

It does not lie in respect of costs taxed in a chancery suit (g), nor for alimony after a decree in the Ecclesiastical Court pending an appeal from that decree (h). For what it does not lie.

The mode of obtaining this writ is by filing a bill (it must be *after* the filing of the bill (i)) containing a prayer for the writ, and then moving upon affidavit for the writ (k). Mode of obtaining.

The affidavit in support of the motion must be as positive as an affidavit to hold to bail; "information and belief" is not sufficient, except upon matter of pure *account* as between partners and executors (l). Affidavit, form of.

The application ought to be as prompt as possible (m).

When made.

Writ (n).

The Queen to the Sheriff of *W.* greeting: because we are given to understand that *A. B.* purposes to go over towards foreign parts to prosecute there many things prejudicial and hurtful to us and many of our people: we willing to resist his malice in this behalf, command you, firmly enjoining that you cause the aforesaid *A. B.* to come corporally before you, and by what means you can compel him to find sufficient manucaptors, who will bail him under a certain penalty, to be reasonably imposed on them by you, for which you will answer to us.

Or thus—

And him the said *A. B.* to find sufficient security under the penalty of £ to be paid to our use, or any one of them, in the penalty of, &c. that he go not towards foreign parts without our special license, nor presume to prosecute or cause to be attempted to be prosecuted any thing whatsoever there which may be able to prevail to the contempt of us, or to the prejudice or damage of our people, nor send any person or persons there for that purpose. And if he shall refuse to do this before you, that then you do commit him the said *A. B.* to our next gaol to be kept safely in the same until he will freely do so; and when you shall have so taken that security, you thereupon, without delay, distinctly and

(e) *Donne's ca.* 1 P. Wms. 262; *Wilson v. Boswell*, 2 Dick. 535.

(f) *Bernal v. Donnegal*, 11 Ves. 47; see also *Howden v. Rogers*, 1 Ves. & B. 133.

(g) *Goodman v. Sayers*, 5 Madd. 471.

(h) *Street v. Street*, 1 Turn. & Russ. 322.

(i) *Anon.* 6 Mad. 276.

(k) 2 Madd. Ch. Pr. 278.

(l) *Jackson v. Petrie*, 10 Ves. jun. 164.

(m) *Ibid.*

(n) 1. Fitz. Nat. Br. 84.

openly inform us thereof, or certify in our Chancery, under your seal, remitting to us this writ, &c. Witness, &c.

Return of Capi Corpus (o).

I have caused the within-named *A.* corporally to come before me, and he found bail in the penalty of £ according to the command of the within writ.

The answer of *G. A.* Esq. High Sheriff.

SECTION VIII.

CAPIAS.

New imprisonment for debt bill. Under this head the recent "Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases, &c." (16th August, 1838 (*a*)), demands our best consideration.

It is not our intention here to discuss the merits or demerits of that statute, but simply to state the law as it is and not what it should be.

Main features of the bill.

The main features of the statute (as regards the Sheriff) are—

1. The abolition of imprisonment for debt on mesne process, except when the debtor is about to quit England.
2. The extending of the common law remedies of judgment creditors against property.

How a personal action is in future to be commenced.
Arrest on mesne process in civil actions in inferior Courts wholly abolished,—in superior Courts also except, &c.

The first of these objects is accomplished by a simple enactment, "that all personal actions in her Majesty's superior Courts of law at Westminster shall be commenced by writ of summons." This necessarily, by implication, abolished the *capias* as a means of commencing any personal action in the superior Courts of law at Westminster, but for fear of doubt it is also negatively declared, "that no person shall be arrested upon *mesne process* in any civil action in any inferior Court whatsoever, or (except in the cases and in the manner herein-after provided for) in any superior Court."

The exception, &c. will be best understood from the words of the act itself:—"If a plaintiff in any action in any of her Ma-

(*o*) I apprehend any return that may be made to the present writ of *capias* (it being but a *ne exeat regno* out of the common law courts) may

be made to this writ; so that it is unnecessary to do more than refer to the returns of the *capias*.

(*a*) 1 & 2 Vict. c. 110.

jesty's superior Courts of Law at Westminster, in which the defendant is now liable to arrest, whether upon the order of a judge or without such order, shall, by the affidavit of himself or of some other person, show to the satisfaction of a judge of one of the said superior Courts, that such plaintiff has a cause of action against the defendant or defendants to the amount of 20*l.* or upwards, or has sustained damage to that amount, and that there is probable cause for believing that the defendant or any one or more of the defendants is or are about to quit England, unless he or they be forthwith apprehended, it shall be lawful for such judge by a special order to direct that such defendant or defendants so about to quit England shall be held to bail for such sum as such judge shall think fit, not exceeding the amount of the debt or damages; and thereupon it shall be lawful for such plaintiff, within the time which shall be expressed in such order, but not afterwards, to sue out one or more writ or writs of *capias* into one or more different counties, as the case may require, against any such defendant so directed to be held to bail, which writ of *capias* shall be in the form contained in the schedule to this act annexed, and shall bear date the day on which the same shall be issued."

When arrest allowed in superior Courts.
Arrestable amount.

Where defendant is about to quit England the only exception.

For what amount to be held to bail.

Writ of *capias* when sued out.

How long in force.

It must be observed, in the first place, that as to the person liable to or privileged from arrest,—the nature or amount of the debt for which an arrest was allowable, the law remains precisely the same as if the statute had never passed into law—the same person may be arrested now that might have been arrested before—the same person is privileged from arrest that was privileged before—and the nature and amount of the debt or damages remain the same, not in anywise altered or affected thereby; but as to the time of issuing the *capias* and the allowance of it, vital alterations have been introduced.

Teste of *capias*.
Effect of the above section on the old law.

Persons that may be arrested.

Persons privileged.

Nature and amount of debt.

Nature of writ.

As before observed a *capias* is no longer the means of commencing an action, it is now a process (if we may be allowed the expression) in nature of a *ne exeat regno* (b); a process simply to prevent a debtor's quitting England; and is a proceeding quite collateral to the action itself.

It must be issued (when issued) after the commencement of the action and before final judgment; in other words, after the teste of

At what stage of the cause it issues.

(b) See "*ne exeat regno*," ante, p. 292.

the summons, whether the summons have been served or not. With these few prefatory remarks before us upon the main features of the statute as regards arrest on *mesme process*, we now proceed to the subordinate changes introduced, the Sheriff's duties and liabilities therein, and to matters of practice connected therewith.

And, firstly, of the privilege from arrest—which is of two kinds, *permanent and temporary*.

Persons permanently privileged from arrest.

The persons permanently privileged from arrest are the *royal family* (c); the servants in ordinary or menial servants of the Queen (d); but not those of the Queen Dowager (e); a lord of the bedchamber (f); the Queen's chaplain (g); peers, whether English, Scotch or Irish (h); peeresses, whether by birth, marriage or creation (i), and whether English, Scotch or Irish; members of the House of Commons (k), and *semble*, members of convocation (l); ambassadors (m) and their "domestics and domestic servants;" the judges and serjeants of the superior Courts, attornies and officers of the Court (n); certificated bankrupts,

(c) 2 Inst. 50.

(d) *Bartlett v. Hebbes*, 5 Term Rep. 686; *King v. Foster*, 2 Taunt. 167; but by the permission of the Lord Chamberlain such an one might be arrested; see Tidd's Pr. 190.

(e) 1 Keb. Rep. 877; see also *Luntley v. Buttini*, 2 B. & A. 234.

(f) *Aldridge v. Barry*, 3 Dowl. 450, n.

(g) *Pain v. Dibdin*, 1 C. M. & R. 821.

(h) *Couche v. Arundel*, 3 East, Rep. 127, extended to Scotch peers and peeresses by stat. 5 Anne, c. 8, 23, (whether such peers sit in parliament or not, Fost. 165;) and to Irish peers and peeresses by the 39 and 40 Geo. 3, c. 67, s. 4; *Coates v. Hawarden*, 7 B. & Cr. 388.

(i) 6 Co. 52; *Huntingdon's ca.* 1 Vent. 298.

(k) During the session of parliament and for a convenient time before and after it, (whether it be after a dissolution or prorogation; *Holiday v. Pitt*, 2 Str. 985). This privilege is generally considered to last for forty days, but the House of Commons (in whom alone the power of deciding the limits of their privilege is vested) have always avoided the question; *Martin's*

ca. Scobell, 109, n.; see also 2 Peck. 268.

(l) 8 Hen. 6, c. 1.

(m) 7 Anne, c. 12, s. 3, he or she must be *bonâ fide* (*Flint v. De Soyant*, Tidd, 191; *Fisher v. Begrez*, 1 Cr. & M. 117; 3 Camp. 47;) a domestic of an ambassador; but it is not necessary that the domestic actually reside in the house, for a chorister in an ambassador's chapel is privileged, nor is it material whether the domestic be a foreigner or a native; 3 Burr. Rep. 1480; for it is the privilege of the ambassador and not of the domestic; *Fisher v. Begrez*, 2 Dowl. 279. The statute does not extend to consuls or their servants; 3 M. & S. 284; nor to such of the domestic servants of an ambassador as are subject to the bankrupt laws, sect. 5; *Triquet v. Bath*, 1 W. Bl. 471.

(n) An attorney who has not taken out his certificate for one whole year, *Brooke v. Bryant*, 7 Term Rep. 25; 5 M. & S. 281; or who has left off practice, (and a single instance of practice is not sufficient, 1 Dowl. 208,) is not privileged. But he does not lose his privilege, though he be sued jointly with another who is not privileged, 2 Dowl. 278; nor in a *qui*

(for any debt provable under the fiat) (o); persons discharged under the Insolvent Act, (for debts, &c. to which adjudication extends) (p); executors, administrators and heirs, (for the debts of the deceased) (q); corporators and hundredors; all petty officers and seamen (r), (for debts contracted subsequently to his having entered the service, or for a debt previously contracted less than 30*l.*, over and above all costs of suit); soldiers and marines (s), (except when the debt amounts to 30*l.* over and above all costs of suit); bail (t); and married women (u).

The persons *temporarily* privileged from arrest are—bankrupts (x), (whilst coming to surrender, and after such surrender

Persons temporarily privileged.

tam action as well as in other actions, Barnes, 48. As to the side clerks of the Exchequer arresting attorneys of the other Courts, see *Stokes v. White*, 1 C. M. & R. 223, and 1 Ch. Arch. 116, 6th edit., where a well-grounded doubt is suggested against the doctrine laid down in this last case, based upon the Uniformity of Process Act, (2 Will. 4, c. 39,) which abolished the writ of *capias* of privilege.

(o) 6 Geo. 4, c. 16, s. 121, 126. Even on a subsequent promise in writing he is it seems privileged; *Gould v. Williams*, 4 Dowl. 91. If the certificate was obtained by fraud or otherwise disputable, the Court will not discharge him; *Stacey v. Fredericki*, 2 B. & P. 390; 6 Taunt. 329; nor will they discharge him where the bankruptcy took place and certificate was obtained in a foreign country; and where the debt was contracted seems immaterial *quoad hoc*; *De la Vega v. Vianna*, 1 B. & Ad. 284; see also 8 B. & C. 477; 5 East, 124.

(p) 1 & 2 Vict. c. 110, s. 90. Even upon a subsequent promise to pay a debt to which adjudication extends; *Gould v. Williams*, 4 Dowl. 91; and though the promise be by a bill which is in the hands of a *bona fide* indorsee; *Kay v. Masters*, 1 Dowl. 86; *vide* 2 Cr. & M. 140.

(q) 3 Bl. Comm. 292; but if an executor or administrator be guilty of a *devastavit*, he may be arrested by a creditor upon a judgment suggesting such *devastavit*; 1 Salk. 98; *Leonard*

v. Simpson, 2 Bing. N. C. 176; or on a sufficient promise in writing to pay such a debt, he may be arrested; 1 T. R. 716.

(r) 3 & 4 Will. 4, c. 6, s. 3; 1 Geo. 2, st. 2, c. 14, s. 15; see *Studwell v. Bunton*, Barnes, 95.

(s) 6 & 7 Will. 4, c. 8, s. 9; see also 8 East, 105; 4 Taunt. 557.

(t) But if judgment be obtained on a bail bond or replevin bond, the plaintiff may arrest the defendant on the judgment; *Prendergast v. Davis*, 8 Term Rep. 85.

(u) Unless she deceitfully and fraudulently holds herself out to the plaintiff as a *feme sole* in order to obtain credit; *Freame v. Mitford*, 1 Cr. & M. 54; 1 Dowl. 16; or unless on a bill which she has given as a *feme sole*; *Jones v. Lewis*, 7 Taunt. 55.

(x) 6 Geo. 4, c. 16, s. 117, besides the privilege given by this statute, a bankrupt has, by virtue of the *common law*, the same privilege that witnesses, &c. have *eundo, morando et redeundo*; *Arding v. Flower*, 3 Esp. Rep. 117; and see *Selby v. Hills*, 1 M. & Sc. 253. The act extends to all debts, whether provable under the fiat or not; *Darby v. Bougham*, 5 T. R. 209; see also *Ex parte Temple*, 2 V. & B. 391; *Ex parte Parker*, 3 Ves. 554; but the act does not extend to a taking of the principal by the bail, for the bail are not creditors; *Ex parte Leigh*, 1 G. & J. 264. The privilege continues along the whole of the forty-second day; *Ex parte Donlevy*, 7 Ves. 317; or the whole of the adjournment day, if ad-

during the forty-two days, and such further time as shall be allowed him for finishing his examination, provided he was not in custody at the time of such surrender).

Barristers (*y*), whilst on circuit, or *eundo, morando et redeundo* from the Court in which they are engaged on business.

Parties and witnesses (*z*), *eundo, morando et redeundo*, from any of the Superior Courts, Bankruptcy Court (*a*), Insolvent Debtors' Court (*b*), and all inferior Courts of law (*c*); and when a cause has been referred under an order of *nisi prius*, parties and witnesses are privileged as if the same were still before the Court (*d*).

Clergymen (*e*), *eundo, morando et redeundo*, from performing divine service.

Aliens are not in general privileged from arrest; and one foreigner may arrest another in this country for a debt which accrued in a foreign country while both resided there, and it may be done although the law of the foreign country does not allow of arrest for debt (*f*).

A permanent privilege necessarily prevents the *issuing* of a *capias*; a temporary privilege prevents the *execution only* durante privilegio, and not the issuing.

Distinction
important to
Sheriff.

This distinction is important to the High Sheriff, for he would, in some cases of permanent privilege, by executing a *capias* incur a fine, imprisonment and even corporal punishment; if, for instance, he were to execute a *capias* upon a member of the royal family (*g*), peer, peeress, or a member of the house of com-

jourled to a particular day; *Simpson's ca.* Buck, 424; but if adjourned *sine die*, then it continues for the time indorsed on the summons of the commissioners, not exceeding three calendar months; 1 Geo. 4, c. 16, s. 118; *Ex parte Woods*, 1 G. & J. 76; see also 1 B. & C. 652; if the forty-two days be expired, and the time for surrendering be enlarged, there is no privilege during the enlarged time; 15 Ves. 1; except the common law privilege, *eundo, morando et redeundo*, from the meeting. The privilege from arrest is derived from the statute, therefore any neglect of the commissioners cannot deprive him of it; *Price's ca.* 3 B. & B. 23.

(*y*) *Luntley v. Nathaniel*, 2 Dowl. 51; *Pitt v. Coombs*, 3 W. & M. 212.

(*z*) Whether compelled to attend or not; *Meekins v. Smith*, 1 H. Bl. 636; and a slight deviation is not material, 3 N. & M. *supra*.

(*a*) *Selby v. Hills*, 8 Bing. 166.

(*b*) *Willingham v. Matthews*, 6 Taunt. 356.

(*c*) Com. Dig. *Privilege* (A.); *Walters v. Rees*, 4 Moore, 34.

(*d*) *Randall v. Gurney*, 3 B. & Al. 252.

(*e*) See 9 Geo. 4, c. 31, s. 23, and *Goddard v. Harris*, 7 Bing. 320.

(*f*) *De la Vega v. Vianna*, 1 B. & Ad. 284, overruling *Melan v. Duke de Fitzjames*, 1 B. & P. 138; see also *Trimley v. Vignier*, 1 Bing. N. C. 151.

(*g*) If a peer be arrested, the Court or a judge will discharge him upon

mons (*h*), he might be committed by the house of lords or commons for a breach of privilege (*i*). So for arresting an ambassador or his domestic, not only the Sheriff and his officer, but also the plaintiff, at whose suit the process issued, and his attorney, would be subject to fine, imprisonment and corporal punishment, provided the name of such *servant* has been properly registered at the office of the Secretary of State, and from thence transmitted to the office of the Sheriffs of London and Middlesex (*k*).

Consequence of arresting an ambassador or his servant.

But although liable, as above suggested, the better opinion seems to be, that the Sheriffs would not be liable in *trespass* for executing a *capias* upon an individual so privileged (*l*); whether he would be liable in *case* or not, even if he was influenced by improper motives in executing it upon a person whom he knew to be so privileged, has never been decided (*m*).

But not liable in *trespass*. In *case* not decided.

He *may* arrest, but he is not obliged to arrest a privileged person; if he chooses to take the truth of the facts upon himself and refuse to execute the writ, he may do so, and the facts constituting the privilege (if true) will be a good return; if false, he will be answerable for his false return; if there be any doubt then the Sheriff should execute the writ, (except as above-mentioned where he might be summarily or by indictment punished for it,) for it is a plaintiff's business to take care how he issues his writ, and not that of the Sheriff's; and if the plaintiff deliver it to the Sheriff he takes all the responsibility upon himself.

Whether he should arrest a person permanently privileged.

As to any case of *temporary* privilege the Sheriff is not obliged

A person temporarily privileged.

application for that purpose, and they will not, upon such application, enter into the right to his title. The privilege of an Irish peer is *prima facie* established; *Story v. Birmingham*, 3 D. & R. 488; *sed vide Davies v. Rendlesham*, 7 Taunt. 679. As to a Scotch peer, see *Digby v. Stirling*, 1 M. & Sc. 116; 1 Dowl. P. C. 248, S. C.; his being a peer and having acted as such is sufficient.

(*h*) If an M. P. be arrested during the period of his privilege, on the production of his return of his writ of election, the Court or a judge will discharge him.

(*i*) So by the 9 Geo. 4, c. 31, s. 23, a party arresting a *clergyman* durante privilegio, with knowledge, would be guilty of a misdemeanor.

(*k*) As to the form of affidavit for discharge of an ambassador's servant, see *Fisher v. Begrsz*, 1 Dowl. 588.

(*l*) *Tarleton v. Fisher*, 2 Dougl. Rep. 676, *ante*, p. 7; and see *Noel v. Isaac*, 1 C. M. & R. 763.

(*m*) *Tarleton v. Fisher*, *supra*; *Lloyd v. Wood*, 5 Adol. & E. 232; *ante*, p. 7; and *Whalley v. Pepper*, 7 C. & P. 506; *Lucas v. Nocketts*, 10 Bing. Rep. 157; 3 M. & Sc. 660; *Oakes v. Wood*, 2 M. & W. 791.

in any manner to respect it (*n*); and the only remedy the person arrested has is by application for his discharge out of custody, and that the bail bond (if any) may be cancelled.

Having so far considered the nature of privilege from arrest and the Sheriff's duties and liabilities thereon, we now proceed to consider the following questions:—1. By process from what Courts a man may be arrested; 2. In what form of action; 3. The amount of debt or damages for which a man may be arrested; 4. The mode of obtaining an arrest; 5. The mode of obtaining a discharge.

1. A man may be arrested on mesne process issuing out of the Queen's Bench, Common Pleas, Exchequer, or out of the Palatine Courts of Lancaster or Durham (*o*), but not out of any inferior Court whatsoever.

The judges of the Palatine Courts of *Lancaster* and *Durham* have power to order an arrest subject to the following conditions or provisos:—"that no order or other proceeding under this act made by any justice or justices of the said Court of Common Pleas of the county palatine of Lancaster, or the Court of Pleas in the county palatine of Durham, shall be valid or effectual *except* made in open Court on one of the court or return days of the same Court, *or except* such justice or justices shall be also a judge or judges of one of the said Courts at Westminster." There is also an additional proviso as to the Court of Pleas of Durham, viz. "that no order directing any person or persons to be held to bail under this act, nor any order for discharging out of custody any person or persons arrested under this Act, shall be made by any justice or justices of the Court of Pleas in the county palatine of Durham, who shall not be a judge or judges of one of the said Courts of common law at Westminster (*p*)."

In what form of action an arrest may be made.

2. *As to the form of action.* The words of the third section are, "in any action in any of her majesty's superior Courts of

(*n*) *Crossley v. Shaw*, 2 W. Bl. 1087; 1 Salk. 1; *Sherwood v. Benson*, 4 Taunt. 631.

(*o*) The Palatine Courts of Durham and Lancaster are superior Courts; *Peacock v. Bell*, 1 Sauud. Rep. 73.

(*p*) 1 & 2 Vict. c. 110, s. 21. All or any of the judges of the Courts at Westminster may be appointed by her Majesty as judges of the Common Pleas at Lancaster; 4 & 5 Will. 4, c. 62, s. 24.

law at Westminster in which the defendant is now liable to arrest, whether upon the order of a judge or without such order ;" in actions on the *case* (*q*), *trover* (*r*), *trespass* (*s*), or *detinue* (*t*), the defendant would have been holden to bail by a judge's order, and consequently may be so still if about to quit England. As regards the action of *assumpsit*, the rule was, that when the cause of action was a *debt* or money demand, as contradistinguished from unliquidated damages, the defendant might have been holden to bail as of course ; but when the action was for unliquidated damages—damages which could not be ascertained with certainty by mere calculation—a judge's order was required ; so that whether it be *indebitatus assumpsit* or *special assumpsit* for unliquidated damages, (as in the former case arrest was allowable as of course without a judge's order, and in the latter allowable by a judge's order,) an arrest is allowable at this day without reference to the species ; the recent statute seemingly in this respect making this difference only, namely, that, in addition to the facts previously necessary for a sufficient affidavit, the defendant's being about to quit England must be stated and sworn to. And, for the same reason, a person cannot be arrested for goods bargained and sold (*u*), or for goods sold and not delivered (*x*), nor for a penalty (*y*), because he could not have been arrested before, it seems, either by or without a judge's order.

In debt (*z*) on simple contract, for the same reasons, the defendant might have been and consequently may now be arrested ; in debt on an award the defendant may be arrested (*a*) ; or on a statute which expressly authorizes an arrest (*b*) ; or on remedial statutes, as on the 9 Anne, c. 14, or on 4 Geo. 2, c. 28, for double rent for holding over, (but not on penal statutes unless expressly authorized (*c*).) On bonds conditioned for the payment of money, or conditioned for the performance of cove-

(*q*) *Hadderwick v. Catmur*, Barnes, 61 ; see also T. Raym. 74.

(*r*) 1 Taunt. 203 ; R. H. 48 Geo. 3.

(*s*) 1 Sell. Pr. 36.

(*t*) *Sutton v. Oswald*, 1 Dowl. P. C. 348.

(*u*) *Hopkins v. Vaughan*, 12 East, 398.

(*x*) *Loisada v. Moryouple*, 1 Bing. 357.

(*y*) *Wilkey v. Thornton*, 2 East, 409.

(*z*) 7 & 8 Geo. 4, c. 71, s. 1.

(*a*) *Anon.* 1 Dowl. P. C. 5.

(*b*) *Holland v. Bothmar*, 4 T. R. 228, 578.

(*c*) 1 Ch. Archb. 133, and cases there cited.

nants (*d*), or a promise to marry (*e*), or the like, the defendant may be arrested; but in actions on bail-bonds, replevin-bonds, and recognizances of bail, the defendant cannot be holden to bail (*f*). On judgments of the superior or inferior Courts the defendant may be arrested, provided the original cause of action is such that the defendant might have been holden to bail for it (*g*); and for the whole or for a balance only where part has been levied by a *fi. fa.*, whether the *fi. fa.* has been returned or not (*h*), and the defendant may arrest the plaintiff where he has obtained judgment, as well as *à converso* (*i*).

In covenant the defendant may be arrested when the covenant is for the payment of a sum certain (*k*).

Amount of debt for which a person can be holden to bail.

3. The words of the third section applicable hereto are, "if * * * such plaintiff has a cause of action against the defendant or defendants to the amount of *twenty pounds* or upwards, or has sustained damage to that amount, * * it shall be lawful, &c." to arrest him or them, if there is probable cause for believing that the defendant or any one or more of the defendants is or are about to quit England, unless he or they be forthwith apprehended; so that 20*l.* is the minimum arrestable amount; and this section is strictly confined to her majesty's superior Courts of law at Westminster; whether 20*l.* is the minimum arrestable amount in the counties palatine (which are superior Courts as well (*l*)) remains to be considered. By the 7 & 8 Geo. 4, c. 71, s. 7, it is enacted, "that no Sheriff or other officer within the said principality [of Wales,] or the counties palatine of *Chester, Lancaster, or Durham*, shall upon any mesne process issuing out of any of his majesty's Courts of record at Westminster, after the said first day of August, arrest or hold any person to special bail, unless such process shall be duly marked and indorsed for bail in a sum not less than *fifty pounds*." As regards *Wales* and *Cheshire*, this section was virtually repealed by the 11 Geo. 4, and 1 Will. 4, c. 70, and since then 20*l.* and not 50*l.* was the

Amount in the Palatine Courts of Lancaster and Durham.

(*d*) *Anderson v. Bell*, 2 Cr. & J. 630.

(*e*) *Kirk v. Strickland*, Dougl. 449, as the penalty in such a case is the debt in law, being in the nature of liquidated damages.

(*f*) *Brandon v. Robson*, 6 T. R. 336.

(*g*) See *Lewis v. Pottle*, 4 T. R. 570.

(*h*) *Green v. Elgee*, 3 B. & Ad. 437.

(*i*) *Lewis v. Pottle*, 4 T. R. 570.

(*k*) R. E. 5 Geo. 2.

(*l*) *Ante*, p. 300.

sum for which a defendant might have been holden to bail therein ; but until the 1st day of October, A. D. 1838, 50*l.* was the arrestable amount in the counties palatine of Lancaster and Durham ; it remains then to consider how far the former of these statutes is affected by the 3rd and 21st sections of 1 & 2 Vict. c. 110.

By section 3, it is clear that no person can be arrested or holden to bail now who could not be so before, by or without a judge's order ; consequently a person who could not before by a process issuing out of the Courts at Westminster have been holden to bail for less than 50*l.*, cannot be holden to bail for less at this day. Assuming this view of the case to be correct, the 7 & 8 Geo. 4, c. 71, s. 7, is still unrepealed, and that no person can be holden to bail in the counties palatine of Lancaster and Durham on process issuing out of any of the Courts at Westminster for a debt less in amount than 50*l.*

With regard to process issuing out of the Palatine Courts, it would seem to follow (as the judges of those Courts by sect. 21 have the like powers as the judges of the superior Courts at Westminster, with regard to process issuing out of the latter Courts,) that 50*l.* and not 20*l.* is the minimum arrestable amount.

4. As to the mode of obtaining an arrest, section 3 states, " if a plaintiff in any action, &c. shall, by the *affidavit of himself or of some other person*, show to the satisfaction of a judge of one of the said superior Courts, that such plaintiff has a cause of action against the defendant or defendants to the amount of 20*l.*, or has sustained damage to that amount, and that there is *probable cause* for believing that the defendant or any one or more of the defendants is or are *about to quit England*, unless he or they be forthwith apprehended ;" the first step therefore is to provide an —

How to obtain a capias.

Affidavit.

In the Q. B. [or " C. P." or " E. P."]

Between $\left\{ \begin{array}{l} G. P. Plaintiff, \\ \text{and} \\ C. W. Defendant. \end{array} \right.$

G. P. of —, — (m), maketh oath and saith, that C. W. before and

(m) By a rule of Hil. T. 2 Will. 4, judge of any of the Courts of K. B.,
r. 4, " an affidavit sworn before a C. P. or Exchequer, shall be received

at the time of the commencement of this suit (n) was and still is justly and truly indebted to this deponent in £ for goods before then sold and delivered by this deponent to the said C. W. at his request, [or *whatever else may be the cause of action*]: and this deponent further saith, that the said C. W. now is a captain actually serving in her Majesty's regiment of the line, and did, on the day of , A. D. 1839, receive orders to proceed without delay along with his regiment to parts beyond the jurisdiction of this Court, namely, to Quebec, in North America (o); and this deponent further saith that, for the reason aforesaid, he verily believes that unless the said C. W. be forthwith apprehended he will quit England.
Sworn, &c.

If it be sworn before a commissioner of the Court out of which the process shall issue (p).

Sworn at A. in the county of W.
the day of A. D. 1838, before
me, a commissioner for taking affidavits in the Court of

W. M.

in the Court to which such judge belongs, though not entitled of that Court; but not in any *other* Court, unless entitled of the Court in which it is to be used." But it would appear from several authorities, that if it appear on the face of the affidavit to be sworn before a competent commissioner it will suffice, though not entitled in any Court; see *Urquart v. Dick*, 3 Dowl. 17, n. Before the recent statute it was not to be entitled in any cause, but as there is now a cause in Court when the affidavit is made, it might perhaps be so entitled without prejudice.

The place of *abode* and *addition* (H. T. 2 Will. 4, r. 5,) of any person making an affidavit shall be inserted therein, but the *addition* of the defendant nor the plaintiff, if not the deponent, need not be stated. The christian and surname of the defendant must be stated in full, except in written instruments, when it is excusable, after due diligence has been used to obtain knowledge of the proper name; H. T. 2 W. 4, r. 32; it may be sworn in the Court or before any judge of the Court out of which the process shall issue (and seemingly in which the action is pending); or before a commissioner of such Court in England, Scotland or Ireland (3 & 4 Will. 4, c. 42); or before the officer issuing

the process or his deputy, provided such deputy be a deputy for issuing process, and not merely for taking affidavits; 1 Ch. Archb. 146, and cases cited; if sworn before a person having no authority to take it, it would be a nullity; *Sharp v. Johnson*, 4 Dowl. 324; it may be made in a foreign country; but if sworn abroad, not only the person's signature to the *jurat*, but also his authority to administer the oath and take the affidavit, must be verified by an affidavit to be made in this country; *French v. Bellew*, 1 M. & S. 302.

(n) *Larchin v. Willan*, 4 M. & W. 351; the *place of abode* and *addition* must be inserted; Hil. Term. 2 Will. 4. As the application for the writ cannot now be made until *after* the teste of the summons, this part of the affidavit, although not perhaps indispensably requisite, should be inserted *à majori cautela*.

(o) Deponent's reasons for believing that the debtor is about to quit England must be, according to the fact, set out at length, that the judge may decide upon their sufficiency, see *ante*, "Ne exeat regno," p. 292.

(p) The affidavit is usually sworn before the officer who issues the process; but it may be sworn in Court or before a judge or commissioner of the Court.

In Scotland or Ireland (3 & 4 Will. 4, c. 42, s. 42.)

Sworn at in the kingdom of Scot-
land the, &c. before me, &c. in the Court
of Q. B. in England. W. M.

By a foreigner when interpreted to him.

Sworn at, &c. by the deponent A. B., the
contents of the affidavit having been first
explained to him in the language by
E. F. of who was first sworn duly to
interpret the same before me.

W. M.

Interpreter's Oath.

You swear that you will truly interpret and explain this affidavit to the
deponent A. B.

So help you God.

As before observed no alteration seems to be made by the recent statute in the form or substance of the affidavit, except in the additional facts, constituting the *probable cause* of the defendant's being about to quit England. Requisites of affidavit.

Whether the part of the affidavit which states that the debt was due before and at the time of the commencement of the suit, be indispensably necessary or not, seems doubtful; in the precedent it is inserted *e majori cauteld.*

It might have been, and may still be, made by the plaintiff himself, or by any third person who can swear to the debt; and if made by a third person, it is not necessary to show any connection between himself and the plaintiff(n). By whom made.

The affidavit must in general be *positive* as to the existence of the debt or cause of action, and not *argumentative* (o); but when it is impossible to swear *positively* to the debt, as where the plaintiff sues in *autre droit* (p), or as assignee of a bankrupt, swearing to his belief, or swearing "as appears by the bankrupt's books, and as he verily believes," it will be sufficient(q); so in the case of an assignee of a bond or the like, he may swear "to the best of his knowledge and belief"(r). So where the cause of action arose from the nonpayment of bills in India, the Must be positive. Exceptions.

(n) *Holliday v. Lawes*, 3 Bing. N. C. 541; *Short v. Campbell*, 3 Dowl. 487.

(o) *Wheeler v. Copeland*, 5 T. R. 364.

(p) *Sheldon v. Baker*, 1 T. R. 87; *Roche v. Carey*, 2 W. Bl. 850.

(q) *Lowe v. Farley*, 1 Ch. Rep. 92.

(r) *Cresswell v. Lovell*, 8 Term Rep. 418.

parties swearing that they were not paid “to his knowledge and belief” in India or elsewhere, was holden sufficient (s).

Must show
a good cause
of action.

The affidavit must also show a good cause of action. Thus an affidavit for interest, without showing some express contract to pay interest, or that it is otherwise claimable as a debt, would be insufficient (t). An affidavit upon an agreement to marry the plaintiff under a penalty, not showing the consideration for the promise to the plaintiff, would be insufficient (u); so wherever it appears that there is a condition precedent to be performed before holding the defendant to bail, the performance of it must be stated (x); so an affidavit that the defendant is indebted to the plaintiff for goods sold and delivered, omitting to state “by the plaintiff to the defendant,” would be insufficient (y).

Must be so
certain that
perjury can
be assigned
upon it.

And the cause of action must be stated with such certainty that perjury may be assigned upon it if untrue; therefore an affidavit that defendant *in* indebted, instead of *is* indebted, is insufficient and bad (z).

Must be
single.

The affidavit must be *single*, and must not contain two causes of action, which cannot be joined in the same declaration (a); but several offences committed by the same defendant under a penal statute may be joined (b).

Must cor-
respond
with the
form of ac-
tion pend-
ing.

The affidavit should also correspond with the form of the action then pending, that is, with the writ of summons previously issued (c).

By sect. 3 it is enacted (as regards the *capias*) that “it shall be lawful for such judge, by a special order, to direct that such defendant or defendants so about to quit England shall be held to bail for such sum as such judge shall think fit, not exceeding the amount of the debt or damages; and thereupon it shall be lawful for such plaintiff, within the time which shall be expressed

(s) *Hobson v. Campbell*, 1 H. Bl. 245.

(t) *Callum v. Leeson*, 2 Com. 406; *Drake v. Harding*, 4 Dowl. 34.

(u) *M'Pherson v. Lovel*, 1 B. & C. 108.

(x) *Elworthy v. Maunder*, 5 Bing. 295.

(y) *Young v. Gatrim*, 2 M. & S. 603.

(z) *Reeks v. Groneman*, 2 Wils.

224; see also *Fricke v. Poole*, 9 B. & C. 543; 2 East, 453.

(a) *Dean and Chapter of Exeter v. Scagell*, 6 T. R. 688; 4 T. R. 697; 5 Burr. Rep. 2690; Tidd, 188.

(b) *Holland v. Bothmar*, 4 T. R. 228.

(c) *Richards v. Stuart*, 10 Bing. 319; see also *Green v. Elgie*, 3 B. & Adol. 437.

in such order, but not afterwards, to sue out one or more writ or writs of *capias*, into one or more different counties, as the case may require, against any such defendant so directed to be held to bail, which writ of *capias* shall be in the form contained in the schedule to this act annexed, and shall bear date on the day on which the same shall be issued: provided always that the said writ of *capias*, and all writs of execution to be issued out of the superior courts of law at Westminster, into the counties palatine of Lancaster and Durham, shall be directed to the chancellor of the county palatine of Lancaster, or his deputy there, or to the chancellor of the county palatine of Durham, or his deputy there." Four points are observable in this, namely; 1. The amount for which defendant is to be held to bail; 2. The time of issuing a *capias*; 3. Its teste; 4. Its direction. All of which are so well explained in the section itself, as to need no further comment.

Writ of Capias.

Victoria, &c. to the Sheriff of [or "to the constable of Dover Castle," or "to the mayor and bailiffs of Berwick-upon-Tweed, or as the case may be], greeting.

We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and take *C. D.* if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit with you according to law, in an action on promises [or "of debt," &c.] at the suit of *A. B.*, or until the said *C. D.* shall by other lawful means be discharged from your custody. And we do further command you that on execution hereof you do deliver a copy hereof to the said *C. D.* And we hereby require the said *C. D.* to take notice, that within eight days after the execution hereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our Court of to the said action, and that in default of so doing such proceedings may be had and taken as are mentioned in the warning written or indorsed hereon. And we do further command you, that immediately after the execution hereof you do return this writ to our said Court of , together with the manner in which you shall have executed the same, and the day of the execution thereof; or if the same shall remain unexecuted, then that you do so return the same at the expiration of one calendar month from the date hereof, or sooner if you shall be thereto required by order of the said Court, or by any judge thereof. Witness at Westminster, [or as the case may be,] the day of .

Memorandum to be subscribed to the Writ.

This writ is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

A Warning to the Defendant.

If a defendant, having giving bail on the arrest, shall omit to put in special bail as required, the plaintiff may proceed against the sheriff or on the bail bond.

Indorsements to be made on the Writ.

Bail for pounds by order of [naming the judge making the order,]
dated this day of

This writ was issued by E. F. of attorney for the plaintiff [or
"plaintiff"] within named.

Or,
This writ was issued in person by the plaintiff within named, who re-
sides at [mention the city, town, or parish, and also the name of the
hamlet, street, and number of the house of the plaintiff's residence, if any
such there be.]

Warrant to Arrest (d).

Westmoreland, to wit. G. A. Esq., Sheriff of the county aforesaid.
To T. D. and W. B., my bailiffs, greeting: By virtue of the Queen's
writ of capias, to me directed, I command each and every of you, jointly
and severally, that you omit not, by reason of any liberty in my bailiwick,
but that you enter the same and take C. W. if he shall be found in my
bailiwick, and him safely keep until he shall have given me bail, or made
deposit with me according to law, in an action on promises, at the
suit of G. P., or until the said C. W. shall, by other lawful means, be
discharged from my custody; and I do further command each and every
of you jointly and severally, that on execution hereof you do deliver to
him a copy of the said writ herewith delivered to you: and I do further
command you, that immediately after the execution hereof you do certify
to me the manner in which you shall have executed the same, and the
day of the execution hereof, so that I may return the same to her Majesty's
said Court, or that, if the same shall remain unexecuted, then that you
do so return this my warrant at the expiration of one calendar month from
the date of the said writ, or sooner if thereto required. Dated the
day of , 1839.

[Seal of Office.]

G. A. Esq. High Sheriff.

(d) The sheriff himself may personally execute the writ, and so may his Under-sheriff, without warrant; Dalt. 103; but it is usually executed by a bound-bailiff, under and by virtue of a warrant, stating the cause of action, the sum for which the defendant is to be holden to bail, and at whose suit.

If directed to two or more jointly and severally, any one may execute the writ; but if directed to them jointly, all must be acting in the arrest, otherwise it will be illegal; 2 Taunt. Rep. 161; Co. Litt. 181 b.

So if it be directed to A. B., and after it is issued A. B. insert the name of C. D.; *Honsin v. Barrow*, 6 Term Rep. 122; or if any part of it be left blank, and after it is issued filled up; *Burslem v. Fynn*, 2 Wils. 47; the warrant is void, and every arrest upon it illegal.

No Sheriff shall issue blank warrants upon pain of severe punishment

and fine; R. E. 15 Car. 2; nor shall he issue a warrant to any of his officers to arrest or attach any person until a writ shall have first been delivered to him; R. M. 1654, 10l. penalty; nor can a bailiff justify an arrest, unless he had received the warrant at the time of the arrest; 4 Bac. Abr. 452; *Green v. Jones*, 1 Saund. 295, n. 6; *Hall v. Roche*, 8 Term Rep. 188.

The day and year set down on the writ must also be set down on the warrant, under the penalty of 10l.; 6 Geo. 1, c. 25, s. 53; it must also be subscribed or indorsed with the name of the attorney, clerk in Court, or solicitor, by whom the process is issued; 2 Geo. 2, c. 23.

A bound-bailiff need not show the warrant, unless demanded; a special bailiff must, Cro. Jac. 485; *Hall v. Roche*, 8 Term Rep. 188.

Mandate to Sheriff in County Palatine of Lancaster.

Charles, Lord Holland, Chancellor of the Duchy of Lancaster, to the Sheriff of Lancaster, greeting: We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same and take *C. W.* of , if he shall be found in your bailiwick, and him safely keep, [*&c. as in the writ of capias to the teste.*] Witness ourself at Lancaster, the day of , in the year of our reign.

By the same Chancellor.

Sect. 4 enacts, " that the Sheriff or other officer to whom any such writ of capias shall be directed, shall, *within one calendar month after the date thereof*, including the day of such date but not afterwards, proceed to arrest the defendant thereupon; and such defendant, when so arrested, shall remain in custody until he shall have given a bail bond to the Sheriff, or shall have made deposit of the sum indorsed on such writ of capias, together with 10*l.* for costs, according to the present practice of the said superior Courts, and all subsequent proceedings as to the putting in and perfecting special bail, or of making deposit and payment of money into Court instead of putting in and perfecting special bail, shall be according to the like practice of the said superior Courts, or as near thereto as the circumstances of the case will admit."

Bail bond,
&c.
Deposit of
debt and
costs.

The writ, it will be observed, is executable for *one* calendar month from the date of it, including the day of such date and not afterwards. In this the capias under the 1 & 2 Vict. c. 110, differs from the capias under the 2 Will. 4, c. 39, the latter having been executable for *four* calendar months from the date of the writ, including the day of the date of the writ; but although valid for one calendar month, he must set about executing the writ in a reasonable time after it is delivered to him, and he must arrest the first opportunity (*e*).

Duration of
writ.

It cannot be executed on a Sunday (*f*), except after a *negligent* escape when the defendant may be retaken on a Sunday (*g*). Bail also may take the principal on a Sunday (*h*). It may be executed at any hour, day or night (*i*).

When it
cannot be
executed.

(*e*) *Brown v. Jarvis*, 5 Dowl. 2.
(*f*) 29 Car. 2, c. 7, s. 6; and see
Taylor v. Phillips, 3 East, 158.

(*g*) *Parker v. Moore*, 2 Salk. 628;
see also 5 Term Rep. 25.
(*h*) *Anon.* 6 Mod. 231.
(*i*) 2 Chit. Rep. 357.

- When executed in Lancashire or Durham. When the writ is to be executed in the county palatine of Lancaster or Durham, the Chancellor or his deputy, to whom the writ is directed (*k*), issues his mandate to the Sheriff; the Sheriff thereupon issues his warrant, and the arrest is made thereon as in ordinary cases; if the writ is to be executed within a liberty, (as the writ contains a *non omittus clause*,) no warrant to the bailiff of the liberty is required (*l*), for the Sheriff, and not the bailiff, must execute the writ in such a case; if in a quillet, (*m*), the same may "be deemed and taken to be part as well of the county wherein such district or place is situate, as of the county whereof the same is parcel; and every such writ and process may be directed accordingly and executed in either of such counties" (*n*).
- Must be within Sheriff's bailiwick. Privileged places. It cannot be executed in any other county, city or town than that to the Sheriffs or Sheriff of which it is directed (*o*), but it may be executed at any place therein, except in the following privileged places: the Tower (*p*), the Queen's Courts of justice while the Queen's justices are there sitting (*q*), within the verge of her royal palace (unless by leave of the board of Green Cloth (*r*)).
- Arrest how made. The arrest is usually made by corporal seizure or touch. Mere words will not suffice (*s*); but when the officer went into the room and fastened the door, telling him at the same time that he arrested him, it was holden a good arrest (*t*). A copy of the writ must be upon or forthwith (*u*) after the arrest delivered to the defendant; *semble* also, that the warrant must be produced (*x*).

(*k*) 1 & 2 Vict. c. 110, s. 3. After the passing of the act of 6 & 7 Will. 4, c. 19, the writ was directed immediately to the Sheriff, Tidd's New Pr. 79; but this is now altered by the 1 & 2 Vict. c. 110, s. 3.

(*l*) *Carrett v. Smallpage*, 9 East, 330.

(*m*) *Ante*, p. 2.

(*n*) 2 Will. 4, c. 39, s. 20.

(*o*) It is said, in p. 8, n. (*o*), that the Sheriff has the power "to arrest within 200 yards of his own county," this is an error of the press, *quod dele*. As to the city of Oxford, see *Granger*

v. Taunton, 5 Dowl. 190; *ante*, p. 5.

(*p*) *Batson v. McLean*, 2 Ch. Rep. 51.

(*q*) 3 Bl. Comm. 289; as to the palace at Westminster, the *privilegium loci* extends from Westminster Hall to Charing Cross, 28 Hen. 8, c. 12.

(*r*) *R. v. Stobbs*, 3 Term Rep. 735; *sed vide Sparks v. Spinks*, 7 Taunt. 311.

(*s*) *Genner v. Sparks*, 1 Salk. 79.

(*t*) *Williams v. Jones*, Hardw. 301.

(*u*) See form of writ, *ante*, p. 307; and *Shearman v. Knight*, 5 Dowl. 572.

(*x*) *Robins v. Hender*, 3 Dowl. 543.

The officer to whom the warrant is directed need not be the person *actually* making the arrest, nor need he be within sight when the arrest is made, but he must be *acting* in the arrest, for instance, he cannot stay at home and send another to make it (y).

As to the power to break open doors, windows, &c., the law thereon is so well expressed by Sir Michael Forster, in his *Discourse of Homicide*, (p. 319), that we give it in his own words:—

“The officer cannot justify breaking open *an outward door or window* in order to execute process in a civil suit, if he do he is a trespasser (x). But if he findeth the outward door open, and entereth that way, or if the door is opened to him from within, and he entereth, he may break open *inward doors* if he findeth that necessary in order to execute his process (a).

“The rule that ‘*every man’s house is his castle* (b),’ when applied to arrests in legal process, hath been carried as far as the true principles of political justice will warrant, perhaps beyond what, in the scale of sound reason and good policy, they will warrant. But this rule is not one of those that will admit of any extension; it must, therefore, as I have before hinted, be confined to the breach of windows and outward doors intended for the security of the house against persons from without endeavouring to break in.

“It must likewise be confined to a breach of the house in order to arrest the occupier, or any of his family who have their domicile, their ordinary residence there; for, if a *stranger, whose ordinary residence is elsewhere*, upon a pursuit taketh refuge in the house of another, that is not *his castle*, he cannot claim the benefit of sanctuary in it.

“The rule is likewise confined to cases of *arrest in the first instance*; for if a man being legally arrested, (and laying hold of the prisoner and pronouncing the words of arrest in an actual arrest,) escapes from the officer and takes shelter, though in his own house, the officer may, upon fresh suit, break open doors

When outer doors may be broken open.

Cannot be broken in executing civil process (that is) on arrest in the first instance.

Inward doors.

A stranger taking refuge in the house of another.

On a re-taking after an escape.

(y) *Blatch v. Archer*, Cowp. 65; 2 M. & R. 315; see post, “Action for not arresting when there was opportunity.”

(x) *Semayne’s ca.* 5 Co. 91.

(a) Without a prior demand; *Hut-*

chinson v. Birch, 4 Taunt. 619; vide *Ratcliffe v. Burton*, 3 B. & P. 223.

(b) It is confined to his *dwelling-house*, therefore a barn or out-house not connected with his *dwelling-house* may be broken open; *Penton v. Browne*, 1 Sid. Rep. 181.

in order to re-take him, *having first given due notice of his business, and demanded admission and been refused* (c).

In all cases where *outer* doors may be broken open a demand must be made by the officer.

Demand in criminal cases.

"And let it be remembered that not only in this, but in every case where doors may be broken open in order to arrest, whether in cases criminal or civil, *there must be such notification, demand and refusal, before the parties concerned proceed to that extremity* (d).

"The rule already mentioned must also be confined to the case of arrest upon process in civil suits; for where a felony hath been committed, or a dangerous wound given, or even where a minister of justice comes armed with process founded on a breach of the peace, the party's own house is no sanctuary for him; doors may in any of these cases be forced; *the notification, demand and refusal before mentioned having been previously made*. In these cases, the jealousy with which the law watches over the public tranquillity, (a laudable jealousy it is), the principles of political justice, I mean the justice which is due to the community, *ne maleficia remaneant impunita*, all conspire to supersede every pretence of private inconvenience, and oblige us to regard the dwellings of malefactors, when shut against the demands of public justice, as no better than the dens of thieves and murderers, and to treat them accordingly. But bare suspicion touching the guilt of the party will not warrant a proceeding to this extremity though a felony has been actually committed, unless the officer comes armed *with a warrant* from a magistrate grounded on such suspicion."

Posse comitatus.

The Sheriff may, but it is not compulsory upon him to raise the *posse comitatus* in order to execute this writ (e).

Bail Bond (f).

Know all men by these presents, that we	are held and
firmly bound to	in the penal sum
Sheriff of the county of	

(c) *Anon.* 6 Mod. Rep. 105; *Genner v. Sparks*, 1 Salk. Rep. 79; *White v. Wilshire*, 2 Rolle's Rep. 138; see *Lloyd v. Sandilands*, 8 Taunt. Rep. 250.

(d) *Lannock v. Brown*, 2 B. & A. 594; *Burdett v. Abbott*, 14 East, Rep. 163; 2 Hale, P. C. 117.

(e) *Noy*, 40; *Crompton v. Ward*, 1 Str. Rep. 432.

(f) The Sheriff is to prepare the bond, and it seems at the expense of

the party arrested; *Milne v. Wood*, 5 Car. & P. 587; it does not require a stamp, 5 Geo. 4, c. 41; it is not indispensably necessary to the validity of the bond that there be an actual arrest; *Taylor v. Clow*, 1 B. & Ad. 223. The bail bond must be executed on or before the eighth day, or it will be void: *Pullein v. Benson*, 1 Ld. Raym. 352; *Taylor v. Clow*, 1 B. & Ad. 223.

Upon sureties having sufficient with-

of of good and lawful money of Great Britain, to be paid to the said Sheriff or his certain attorney, executors, administrators or assigns, for which payment to be well and faithfully made we bind ourselves, and every one of us by himself for the whole and every part thereof, and the heirs, executors and administrators of us and every of us, firmly by these presents, sealed with our seals. Dated this day of in the year of the reign of our Sovereign lady Victoria, by the grace of God of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, and in the year of our Lord, 183 . Whereas the above bounden , was on the day of , taken by the said Sheriff in the bailiwick of the said Sheriff, by virtue of the Queen's writ of capias issued out of her Majesty's Court of , bearing date at Westminster, the day of , to the said Sheriff directed and delivered against the said in an action on at the suit of . And whereas a copy of the said writ, together with every memorandum or notice subscribed thereto and all indorsements thereon, was, on execution thereof, duly delivered to the said . And whereas is by the said writ required to cause special bail to be put in for in the said Court to the said action within eight days after execution thereof on inclusive of the day of such execution. Now the condition of this obligation is such, that if the said do cause special bail to be put in for to the said action in her Majesty's said Court as required by the said writ, then this present obligation to be void and of no force, otherwise to stand and remain in full force, vigour and effect.

Sealed and delivered in the presence of
Sum indorsed . Attorney, .

Assignment (h) of Bail Bond.

I, the within-named Sheriff, at the request of the within-named plaintiff,

in the county, &c. when the arrest was made being tendered; *Lovell v. Plummer*, 15 East, Rep. 320; (but for whose sufficiency the Sheriff is not answerable, 2 Saund. 61 b;) the Sheriff is bound to discharge him; *ibid.*; the number of sureties is unlimited—one or several; 10 Co. 101; 2 Saund. Rep. 61 c; *Matson v. Booth*, 5 M. & S. 223; see post, "Action for refusing to accept Bail."

The security to the Sheriff must be by bond—(therefore an attorney's undertaking to the Sheriff is void; 1 Dowl. P. C. 261; as to an undertaking to the plaintiff, see *Evans v. Moreley*, 2 Dowl. 364;) the bond must be to the High Sheriff himself by the name of his office, *Rogers v. Reeves*, 1 Term Rep. 422; 7 Ib. 109; *Lewis v. Knight*, 8 Bing. 271. As to the condition of the bond, see *Hurlstone on Bonds*, 56; 1 Ch. Archb. 192; *Rogers v. Reeves*, *supra*.

The Sheriff may take a bail bond on

an attachment for contempt for non-payment of costs; *Lewis v. Morland*, 2 B. & A. 65; but not to an attachment out of Chancery, the 23 Hen. 6, c. 10, applying only to Courts of law; but in the latter case it is entirely in the Sheriff's discretion to take one or not, if so, it will be valid at common law, although not within the provisions of the statute; *Morris v. Hayward*, 6 Taunt. Rep. 569; 2 Marsh. Rep. 280, S. C.

In practice bail is generally taken in double the sum sworn to, but it should be taken for the sum indorsed on the writ and no more, 12 Geo. 1. c. 29, s. 2; *Wingrave v. Godmond*, 6 Car. & P. 66; the 1 & 2 Vict. c. 110, s. 4, does not affect the practice in this respect.

(h) The assignment may be made by the High Sheriff, or Under-sheriff in the name of his principal; *Wright v. Barrack*, 1 T. & G. 764; or it seems by a person acting in the Under-

assign over to this bail bond pursuant to the statute . In
 witness whereof I have hereto set my hand and seal this day of
 , 183 G. A., Esq., High Sheriff.

Sealed and delivered in the presence of

A. M.

S. B.

RETURNS (i).

Return of Non est inventus (k).

The within named C. D. is not found in my bailiwick.

The answer of G. A., Esq., High Sheriff.

sheriff's office; *Harris v. Ashley*. Tidd's New Pr. 164; *Middleton v. Sandford*, 4 Camp. Rep. 36; or it may be made by the old Sheriff after he is out of office; Fort. Rep. 364. It must be made by indorsement on the bond under the hand and seal of the Sheriff, and made in the presence of two credible, that is, disinterested persons; *Wright v. Barrack*, 1 M. & W. 424; it is not necessary that the witnesses should both subscribe their names at the time of the execution of the assignment; *Phillips v. Barlow*, 1 Scott's Rep. 322; 1 Bing. N. C. 433, S.C.; *Daves v. Papworth*, Willes, 408; 2 Saund. 61 n.; it need not be stamped, 5 Geo. 4, c. 41; see post, "Action for not assigning Bail Bond."

With regard to money deposited with the Sheriff in lieu of giving bail, the practice remains as before the 1 & 2 Vict. c. 110, s. 4, vide 43 Geo. 3, c. 46, by which this power was given. The Sheriff must, it seems, within the eight days after the arrest, pay the sum deposited into Court; which, if defendant duly puts in and perfects special bail, or renders himself, may be recovered on motion; no poundage or other fees can be deducted therefrom; *Haines v. Nairn*, 2 Dowl. P. C. 43.

Upon receiving a written discharge from the plaintiff or his attorney, the Sheriff is bound to discharge the person arrested without a bail bond, &c.; *Martin v. Francis*, 2 B. & Ald. 402; but he may detain him for his fees; 2 B. & Ald. *supra*; but the plaintiff's attorney cannot. Or,

The Sheriff may discharge the debtor without any bond for his appearance, for if he has him in his custody before the time limited for his appearance,

or if after returning *cepi corpus*, and before the expiration of the rule to bring in the body, he put in and perfect bail, or render the defendant, he is not liable for an escape or false return; *Pariente v. Plumtree*, 2 Bos. & P. 35; *sed quare*, 1 Ch. Archb. 200, and cases cited; such render will not vacate the bond; *Hodgson v. Mee*, 3 Ad. & E. 765. If the Sheriff improperly discharge a defendant without a bail bond, &c., and be obliged to pay the plaintiff the amount of his debt, neither he nor his officer can maintain any action against the defendant for the money so paid; *Pitcher v. Bailey*, 8 East, Rep. 171; see post, "Action for not arresting when there was an opportunity," and for "carrying to a Tavern or to Prison within twenty-four Hours."

(i) The day of the arrest is the return day, *Hodgson v. Mee*, 3 A. & E. 765; 5 N. & M. 302, S.C., or if the same remains unexecuted, then at the expiration of one calendar month from the date thereof, or sooner if ordered, see "Writ of Capias," ante, p. 307; if the defendant does not appear to the writ according to the condition of the bail-bond, that is, if he does not put in special bail in due time, or does not perfect special bail in due time, the bond is forfeited, and the plaintiff may either take an assignment of the bail-bond or proceed against the Sheriff. The proceeding against the Sheriff is by rule or order upon him to return the writ, which by a general rule of all the Courts of M. T. 7 Will. 4, is in all cases (except in London and Middlesex) an eight day rule, and in London and Middlesex a four day rule, R. T. 6 Geo. 3; if bail have been

Returns of Capi corpus et Paratum habeo (1).

1. On the day of , A. D. 1839, I took the within named C. D. in my bailiwick, and forthwith delivered to him a copy of this writ, and him safely kept until he gave me bail [or "made deposit with me"] according to law. The answer of G. A., Esq., High Sheriff.

2. On the day of , A. D. 1839, I took the within named C. D. and forthwith delivered to him a copy of this writ, and whose body I have ready as within I am commanded.

Return that Defendant is in Custody.

On the day of , A. D. 1839, I took the within named C. D. and forthwith delivered to him a copy of this writ, and whose body is now under my custody in the county gaol at A.

The answer of G. A., Esq., High Sheriff.

Return of prior removal by Habeas Corpus.

By virtue of this writ to me directed I did on the day of take the within named C. D., and did safely keep him in her Majesty's prison in and for the county of W., until afterwards, to wit, on, &c. I received her said Majesty's writ of *habeas corpus cum causâ* commanding me to have the body of the said C. D. before the Right Honourable Thomas Lord Denman, at his chambers in Roll's Yard, Chancery Lane, London, immediately after the receipt of that writ: By virtue of which said writ, on the day and at the place therein mentioned I had the body of the said C. D. before, &c. who then received of me the body of the said C. D., and then committed him to the prison of the Marshal of the Marshalsea of our lady the Queen, and then wholly discharged me from further keeping him under my custody: Wherefore I cannot have the body of the said C. D. before our said lady the Queen at the day and place within contained as within I am commanded.

The answer of G. A., Esq., High Sheriff.

already put in but not justified, in order to compel a justification they should be excepted to and notice of exception served, and then rule the Sheriff to return the writ; if the Sheriff omits to do so he will be liable to an attachment. The plaintiff may proceed against the Sheriff notwithstanding a render within the eight days after the arrest unless he has also put in special bail, *Hodgson v. Mee*, 3 Ad. & E. 765. The plaintiff cannot proceed against the Sheriff when the arrest has been made by a special bailiff, *Pallister v. Pallister*, 1 Ch. Rep. 614; *ante*, p. 46; or where plaintiff has taken an assignment of the bail-bond, 2 Saund. 61 (*e*); or any security from the defendant without the privity of the Sheriff, 1 Ch. Arch. 204, and cases cited.

As to ruling the old Sheriff, *vide* 20 Geo. 2, c. 37, but under special

circumstances the Sheriff may be ordered to return the writs, though long after the expiration of six months after the expiration of his office.

By rule of H. T. 1 Vict. it is ordered, "that judges orders to return writs (whether of mesne or final process), and to bring in the body, be drawn up without any affidavit."

In the counties palatine the order is made upon the Sheriff, and not upon the person to whom the writ is directed, 1 Sellon, 195.

(*k*) A return that the defendant is not to be found in my bailiwick is bad, *Potter v. Simpson*, 5 Dowl. P. C. 451; *mandavi ballivo* is not a good return to this writ, *ante*, 48; a rescue is a good return, Noy, 40; 1 Str. 432.

(*l*) The meaning of this return is that defendant is *at large upon bail*, *Hodgson v. Mee*, 3 Ad. & E. 765.

Defendant's discharge. As to the mode of obtaining a discharge (whether on the ground of privilege or for any other cause it seems) it is enacted, "that it shall be lawful for any person arrested upon any

Application to whom made. such writ of *capias* to apply at *any time* after such arrest to a judge of one of the superior Courts at Westminster, or to the Court in which the action shall have been commenced, for an

Rule nisi. order or rule on the plaintiff in such action to *show cause* why the person arrested should not be discharged out of custody; and that it shall be lawful for such judge or Court to make absolute or discharge such order or rule, and to *direct the costs of the application* to be paid by either party or to make such order therein as to such judge or Court *shall seem fit*: Provided that

Costs. any such order made by a judge may be discharged or varied by the Court, on application made thereto by either party dissatisfied with such order" (*m*).

Discharging or varying judges' order in Court. I have not seen any affidavit in practice upon this clause; it is still matter of conjecture, therefore, whether the defendant's affidavit may enter into the merits of the cause of action, &c. or should be confined to the probable cause of the defendant's being about to quit England, or in the absence of authority to guide us, the latter seems the more correct view of the matter.

Essentials of affidavit to obtain discharge.

SECTION IX.

CAPIAS AD SATISFACIENDUM.

How affected by imprisonment for debt bill. This writ alone of those in common use on mesne or final process has passed through the fiery furnace of change unscathed and unaltered.

Nature of writ. It is a judicial writ, issued by a creditor after final judgment against the *person* of his debtor—the highest satisfaction the law can award to the creditor for his debt—of so high a nature, that when once executed no other process can be sued out against his lands or goods.

Writ(a) in Assumpsit and Covenant.

Victoria, &c. to the Sheriff of W. greeting: We command you that

(*m*) 1 & 2 Vict. c. 110, s. 6.

(*a*) By R. H. 2 Will. 4, c. 75, it is

ordered "that it shall not be necessary that any writ of execution should be

[you omit not by reason of any liberty in your bailiwick but that] you take *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you have his body before us [or in *C. P.* "before our justices," or in *E. P.* "before the barons of our Exchequer,"] at Westminster, immediately after the execution hereof [or "on "], to satisfy *A. B.* £ , which in our Court before us [or in *C. P.* "before our justices," or in *E. P.* "before the barons of our Exchequer,"] at Westminster, were awarded to the said *A. B.* for his damages which he sustained, as well on occasion of not performing certain promises [or "covenants"] made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, and have you then there this writ. Witness, &c.

[Indorsed: "Levy £ . The defendant is a , and resides at No. , street. *J. C.* of No. , Furnival's Inn, plaintiff's attorney, the day of , A. D. ."]

Writ in Debt.

Commence ut supra, "to satisfy *A. B.* as well a certain debt of £ which, &c. recovered against him, as also £ which were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of detaining the said debt as for his costs and charges by him about his suit in that behalf expended, &c."

Writ in Case, Trover, and Trespass.

Ut supra, "on occasion of a certain grievance [or "trespass"] then lately committed by the said *C. D.* to the said *A. B.* &c."

signed; but no such writ shall be sealed till the judgment paper, postea, or inquisition has been seen by the proper officer; 3 B. & Ad. 385; 2 C. & J. 189; if left with the clerk of the judgments they may be obtained from him in order to get it sealed. So likewise the judge's certificate for immediate execution (if any) must be produced.

If issued from the *Queen's Bench* the place of abode and addition of the party against whom the writ is issued, or such other description of him as the attorney concerned for the plaintiff in the cause or his agent may be able to give, R. H. 2 & 3 Geo. 4, otherwise it may be set aside; see *Constable v. Fothergill*, 2 Dowl. 591; *Clarke v. Palmer*, 9 B. & Cr. 153; and the Sheriff is not bound to execute it, *Henrick v. Nanney*, 1 Dowl. P. C. 58.

If issued from the *Court of Exchequer* the name and address of the person issuing the same, also the day, month, and year in which the same shall be issued, must be indorsed, M. T. 1 Will. 4, r. 11.

If issued from the *Common Pleas* it must be subscribed or indorsed with the name of the attorney issuing the same, 2 Geo. 2, c. 23, s. 22; vide *Constable v. Fothergill*, 1 C. & M. 88, *supra*; *Davidson v. Dunne*, 4 Dowl. 119.

It may be tested on the day on which it issues and be made returnable immediately after the execution thereof, 3 & 4 Will. 4, c. 67; if tested of a term previous to the judgment or when issued under the 1 Will. 4, c. 7, s. 13, if not tested on the day it issues, it is irregular, but it may be amended.

As to the levy, it may be indorsed thus: "*Levy £ besides officer's fees*," meaning the fees allowed in the "*table of fees*" hereinafter set forth; if the judgment was upon a warrant of attorney or cognovit the levy will depend upon the agreement of the parties.

As to the *non omittas clause*, vide ante, p. 48.

Alias Ca. Sa.

Victoria, &c. to the Sheriff of *W.* greeting: We command you, as before we have commanded you, that you take, &c.

Pluries Ca. Sa.

Victoria, &c. to the Sheriff of *W.* greeting: We command you, as oftentimes we have commanded you, that you take, &c.

Testatum Ca. Sa.

Victoria, &c.: Whereas by our writ we lately commanded our Sheriff of *W.* that he should take *C. D.* if he should be found in, &c. [*as in original*] and our said Sheriff of *W.* on, &c. returned to us [*or "to our justices, &c." as the case may be*] that the said *C. D.* was not to be found in his bailiwick: Whereupon, on behalf of the said *A. B.*, it is testified in our said Court that the said *C. D.* wanders up and down and secrets himself in your county, thereupon we command you to take the said, &c. [*ut suprâ.*]

Ca. Sa. into Lancashire.

Victoria, &c. to the Chancellor of our county palatine of Lancashire or his deputy greeting: We command you that by our writ under the seal of our said chancellor to be duly made, and to be directed to the Sheriff of our said county, you cause the said Sheriff to be commanded that he take *C. D.* if he may be found in his bailiwick, and him safely keep so that you may have his body before, &c. [*ut suprâ.*]

Testatum Ca. Sa. into Lancashire.

Victoria, &c.: Whereas we lately commanded our Sheriff of *W.* that, &c. and our said Sheriff returned to us [*or "to our justices or barons"*] at Westminster, that the said *C. D.* was not found in his bailiwick: Whereupon, &c.

Privilege
from arrest.

The persons privileged from arrest on *mesne process* have already been enumerated, and as a general rule they enjoy the same privilege on *final process*, except attorneys, infants (*b*), bail (*c*), and femmes covert.

Note, if a *ca. sa.* be issued against baron and feme the Court will not discharge her (if taken) unless she has no separate available property (*d*).

Warrant,
arrest, re-
turn, &c.

As to the warrant to execute the writ—the mode of making the arrest—breaking open doors—returns, and the like, it would be vain repetition to do more than simply refer to the same

(*b*) *Daw v. Clarke*, 1 C. & M. 860.

(*c*) *Goodchild v. Chaworth*, 2 Str. Rep. 1139.

(*d*) *Sparkes v. Bell*, 8 B. & C. 421;

Moss v. Richardson, *ibid.* 421; see *Lockwood v. Salter*, 5 B. & Adol. 303.

heads under the *capias* already described, for the same law in general applies to each.

A Sheriff's officer, however, is not liable to the penalties of 32 Geo. 2, c. 28, s. 1, for carrying the debtor to prison within twenty-four hours; the statute applies to arrests on *mesne process* only (e). Debtor may be taken to prison immediately.

He must raise the *posse comitatus* and consequently a return of rescue is bad. Posse comitatus.

The Sheriff should not receive the debt and costs, for if he does, and before payment over to the plaintiff liberate him, it is an escape (f). Payment to Sheriff of debt no payment to the plaintiff.

If the *ca. sa.* be once executed (as before observed) no other execution can issue against the defendant for the same debt, for it operates as a satisfaction of the debt (g); if he dies, however, execution against his lands or goods may issue in the same manner as if no *ca. sa.* had issued (h). If once executed no other writ can issue, except, &c.

But although the effect of the arrest is a satisfaction of the debt as regards the person arrested, yet it is no actual satisfaction so as to bar the plaintiff from taking out execution against others liable to the same debt and damages (i); nor is it a satisfaction of the judgment when the *ca. sa.* is set aside for irregularity (k). No satisfaction as between others and plaintiff.

If the *ca. sa.* be not executed, the plaintiff may, upon a *non est inventus* returned, have an *alias* and *pluries ca. sa.* into the same county, or a *testatum ca. sa.* into a different county (l), or he may have any other writ of execution; this writ cannot issue after an *elegit* which has been executed. A *ca. sa.* and a *fi. fa.* may be running at the same time, but they cannot both be exe- Different writs.

(e) *Evans v. Atkins*, 4 Term Rep. 555.

(f) See post, "Action for Escape," and cases there cited, to which the practitioner is especially invited to refer.

(g) *Cohen v. Cunningham*, 8 Term

Rep. 123; *Beavon v. Robins*, 8 D. & R. 42.

(h) 21 Jac. 1, c. 24.

(i) *Foster v. Jackson*, Hob. 59.

(k) *M'Cornish v. Melton*, 1 Cr. M. & R. 525; 5 Tyr. 157.

(l) *Allen v. Allen*, 2 W. Bl. 694.

cuted. Again, if the *fi. fa.* has been executed, no *ca. sa.* can issue until *after* the *fi. fa.* has been returned.

Return of writs of execution.

Writs of execution are never returned by the Sheriff, unless he be ordered or ruled so to do; for the Sheriff may justify under these writs without showing a return of them, but in justifying under a writ on mesne process he must show its return (*m*).

Cannot refuse to execute writ until fees are paid.

An Under-sheriff cannot refuse to execute a *ca. sa.* until his fees are paid; after payment he might be indicted for extortion, or before payment be liable in damages for not doing his duty (*n*).

Action for fees.

An action of debt lies for his fees for executing this writ (*o*).

SECTION X.

FIERI FACIAS.

Change introduced by the imprisonment for debt bill.

This writ has undergone great change in form and substance by the recent "*Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain cases; for extending the Remedies of Creditors against the Property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England* (*a*)."

Form of writs since.

By section 20 of the same statute, the judges are empowered to order new or altered writs to issue, as may be deemed necessary or expedient for giving effect to the provisions of the act; it is to be regretted that the judges have not as yet thought fit to exercise that power by publishing new or altered writs, for it is extremely doubtful whether any other person can alter the writ so as to carry the provisions of the statute into effect, add to this the extreme difficulty of doing so, as will hereafter appear. The words immediately applicable hereto are, "and that any existing writ, the form of which shall be in any manner

(*m*) 5 Co. 90; *Freesman v. Bluet*, 12 Mod. 849; 1 Salk. 409.

(*n*) Salk. Rep. 331; Noy, 75; *vide post* "*Extortion*."

(*o*) *Jayson v. Rash*, Salk. Rep. 209.

(*a*) 1 & 2 Vict. c. 110.

altered *in pursuance of this act*, shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this act."

In the absence, then, of *judicial* precedent for the writ, the following precedent is suggested :—

Writ (b).

Victoria, &c. to the Sheriff of *W.* greeting. We command you that [you omit not by reason of any liberty in your bailiwick, but that] you cause to be levied of the goods, chattels, money, bank-notes, cheques, bills of exchange, promissory notes, bonds, specialties and other securities for money, in your bailiwick, of *C. D.*, the sum of £ , which, in our Court before us [or in *C. P.* "before our justices," or in *E. P.* "before the barons of our Exchequer,"] at Westminster, were awarded to *A. B.* for his damages which he sustained as well on occasion of the not performing certain promises as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted as appears to us of record, and have you that money before us [or "before our justices," or "barons,"] at Westminster immediately after the execution hereof, to render to the said *A. B.* for his said damages, and have you then there this writ. Witness, &c.

Alias Fi. Fa. (c).

Victoria, &c. to the Sheriff of *W.* greeting. We command you, as before we have commanded you, that, &c.

Pluries Fi. Fa.

Victoria, &c. to the Sheriff of *W.* greeting. We command you, as oftentimes before we have commanded you, that, &c.

Testatum Fi. Fa. (d).

Victoria, &c. to the Sheriff of *W.* greeting. Whereas by our writ we lately commanded our Sheriff of *W.* that he should cause to be levied of

(b) As to the signing, sealing, return, indorsements, &c., *vide ante*, p. 317.

With regard to the form of the writ, except as to the subject-matter seizable under it, perhaps no valid reason for altering it can be assigned, for although "cause to be made" was said to mean by *sale*, *Armistead v. Philpot*, Dougl. 219, yet this was not universally true; *Woolley v. Jennings*, 5 B. & Cr. 135; the word "levied," however, seems now more appropriate than "made." With regard to the additional words after goods and chattels, it would be desirable if practicable to adopt some one generic term, as "effects" or "property," but as at present advised, I fear there is none sufficiently

comprehensive to contain under it all matters leviable under the new statute; *è majori cautela*, therefore, the form suggested, should be used until the judges think proper to exercise the power given them of framing and issuing new writs.

With regard to the *non omittas clause*, *vide ante*, p. 48; as to forms of writs in *debt*, *trespass*, &c., *vide ante*, p. 317, which may readily be adapted to a *fi. fa.*

(c) As to the *sealing, signing, returning, indorsing*, &c., *vide ante*, 317.

(d) As to *sealing*, &c., *suprà*. A *testatum fi. fa.* is grounded upon a *fi. fa.*, but such an irregularity may be cured by the subsequent production of a *fi. fa.*, *Brand v. Mears*, 3 T. R. 388.

the goods, chattels, &c. in his bailiwick, of *C. D.*, which in our Court before us at Westminster were awarded to *A. B.* for his damages which he sustained as well on occasion of not performing certain promises made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* was convicted, as appeared to us of record, and that he should have that money before us at Westminster immediately after the execution thereof, to render the said *A. B.* for his damages aforesaid. And our said Sheriff of *W.* returned to us that the said *C. D.* had no goods, chattels, &c. in his bailiwick whereof he could cause to be made the damages aforesaid, or any part thereof. Whereupon on the behalf of the said *A. B.* it is testified in our said Court that the said *C. D.* hath goods, chattels, &c. sufficient within your bailiwick, whereof you may cause to be levied the damages aforesaid, or any part thereof. Therefore we command you that you cause to be levied of the goods, chattels, &c. in your bailiwick of the said *C. D.* £ for the damages aforesaid, and have that money before us at Westminster immediately after the execution hereof, to render to the said *A. B.* for his said damages, and have you then there this writ. Witness, &c.

Fi. Fa. into Lancashire (e).

Victoria, &c. to the Chancellor of our county palatine of Lancaster, or his deputy, greeting: We command you that by our writ, under the seal of our said county, to be duly made, and to be directed to the Sheriff of our said county, you cause the said Sheriff to be commanded that he cause to be levied of the goods, chattels, &c., in his bailiwick of *C. D.*, &c.

What may be taken under a *fi. fa.*

Goods and chattels.

56 Geo. 3, respecting straw, &c. to be consumed on premises according to leases.

On referring to the writ itself, it will be seen what can be taken in execution under it; namely, *goods and chattels*, that is to say, all personal chattels belonging to the defendant (except wearing apparel actually in use) (*f*); all goods pawned or leased, *subject to the right of the pawnee or lessee* (*g*); cattle, corn in the barn, household stuff, plate, &c. (*h*); utensils fixed by the defendant for the purposes of his trade, such as coppers, vats, and the like (*i*); with respect to corn and other articles, which are raised by the industry of man, by the 56 Geo. 3, c. 50, s. 1, it is enacted, after reciting that it was expedient that the execution of legal process should be so regulated as to be consistent with good husbandry, and the effect and intent of covenants and agreements entered into between the owners and occupiers of land let to farm—

(*e*) Testatum *fi. fa. into Lancashire*, ante, p. 318.

(*f*) 3 Co. 12; Comb. 356.

(*g*) Com. Dig. "Execution" [C.3]; *Scott v. Scholey*, 8 East Rep. 476; *Jenkins v. Cooke*, 1 Ad. & E. 372.

(*h*) *Ibid.*; Co. Litt. 390; Dalt. 145.

(*i*) *Poole's case*, 1 Salk. Rep. 368; *Elwes v. Maw*, 3 East Rep. 38; *Storer v. Hunter*, 3 B. & C. 368.

"That from and after the passing of this Act, no Sheriff or other officer in England or Wales, shall, by virtue of any process of any Court of law, carry off or sell or dispose of for the purpose of being carried off from any lands let to farm, any straw threshed or unthreshed, or any straw of crops growing, or any chaff, colder or any turnips, or any manure, compost, ashes or seaweed, in any case whatsoever; nor any hay, grass, or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables, being produce of such lands, in any case where, according to any covenant or written agreement, entered into and made for the benefit of the owner or landlord of any farm, such hay, grass or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements, ought to be used or expended thereon, and of which covenants or agreements, such Sheriff or other officer shall have received a written notice before he shall have proceeded to sale.

No Sheriff or other officer shall sell or carry off from any lands any straw, chaff or turnips, in any case, nor any hay or other produce contrary to the covenant.

"2. And be it further enacted, that the tenant or occupier of any lands let to farm, against whose goods any process of law shall issue, whereby such goods may be taken and sold, shall, on having knowledge of such process, give a written notice to the Sheriff or other officer executing the same, of such covenants or agreements, whereof he or she shall have knowledge, and which may relate to and regulate, or are intended to regulate the use and expenditure of the crops or produce grown or growing thereon, and also of the name and residence of the owner or landlord of such lands; and such Sheriff or other officer shall forthwith, on executing such process, and before any sale shall have been proceeded in, send a notice by the general post to the owner or landlord of such lands, in all cases where such owner or landlord shall be resident in any part of this united kingdom, and shall have been made known to and ascertained by such Sheriff or other officer, and also to the known steward or agent of such landlord or owner, in respect of such lands, stating to such owner, landlord and agent, the fact of possession having been taken of any crops or produce hereinbefore mentioned; and such Sheriff or other officer shall, in all cases of the absence or silence of such landlord or owner, or his or her agent, postpone and delay the sale of such crops or produce until the latest day he lawfully can or may appoint for such sale.

Tenant to give notice of existence of covenants;

and Sheriff to give notice to owner or landlord.

"3. Provided always, and be it further enacted, that such Sheriff or other officer executing such process may dispose of any crops or produce hereinbefore mentioned, to any person or persons who shall agree in writing with such Sheriff or other officer, in cases where no covenant or written agreement shall be shown, to use and expend the same on such lands, in such manner as shall accord with the custom of the country; and in cases where any covenant or written agreement shall be shown, then according to such covenant or written agreement; and after such sale or disposal so qualified, it shall be lawful for such person or persons to use all such necessary barns, stables, buildings, outhouses, yards and fields, for the purpose of consuming such crops or produce, as such Sheriff or other officer shall allot or assign to them for that purpose, and which such tenant or occupier would have been entitled to and ought to have used for the like purpose on such lands.

Sheriff may dispose of produce subject to an agreement to expend it on the land.

"4. And be it further enacted, that such Sheriff or other officer shall, on the request of any landlord or owner who shall be aggrieved by any breach of such agreement, permit such landlord or owner to bring any action or actions in the name of such Sheriff or other officer, for the recovery of damages in respect of such breach, such landlord or owner

Sheriff to permit landlord or owner to bring action in his name.

having nevertheless fully indemnified such Sheriff or other officer against all costs whatsoever, and all loss and damage, before any such action shall be commenced.

Sheriff to inquire as to name and residence of landlord.

"5. And be it further enacted, that such Sheriff or other officer shall, before any sale of any crops or produce of any lands let to farm shall be proceeded in, make, by all ways and means, due inquiry within the parish where such lands shall be situate, as to the name and residence of the landlord or owner of such lands.

Landlords not to distrain for rent on purchasers of crops severed from the soil, or other things sold subject to agreement.

"6. And be it further enacted, that in all cases where any purchaser or purchasers of any crop or produce hereinbefore mentioned shall have entered into any agreement with such Sheriff or other officer, touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent on any corn, hay, straw or other produce thereof, which, at the time of such sale and the execution of such agreement entered into under the provisions of this Act, shall have been severed from the soil, and sold, subject to such agreement, by such Sheriff or other officer; nor on any turnips, whether drawn or growing, if sold according to the provisions of this Act; nor on any horses, sheep or other cattle, nor on any beast whatsoever, nor on any waggons, carts or other implements of husbandry, which any person or persons shall employ, keep or use on such lands, for the purpose of threshing out, carrying or consuming any such corn, hay, straw, turnips or other produce, under the provisions of the Act, and the agreement or agreements directed to be entered into between the Sheriff or other officer, and the purchaser or purchasers of such crops and produce, as hereinbefore are mentioned.

Sheriff not to sell clover, &c. growing with corn.

"7. And be it further enacted, that no Sheriff or other officer shall, by virtue of any process whatsoever, sell or dispose of any clover, ryegrass or any artificial grass or grasses whatsoever, which shall be newly sown, and be growing under any crop of standing corn.

Proviso for contracts.

"8. Provided always, and be it enacted, that this Act shall not extend to any straw, turnips or other articles, which the tenant may remove from the farm consistently with some contract in writing.

Sheriff not liable for damages, unless for wilful omission.

"9. And be it further enacted, that in every case where any action shall be brought against such Sheriff or other officer, for any breach of or omission of compliance with the provisions of this Act, no plaintiff shall be entitled to recover any damages against such Sheriff or other officer, unless it shall be proved on the trial of such action, that such breach or omission was wilful on the part of such Sheriff or other officer.

Indemnity to Sheriff and others acting under provisions of act.

"10. And be it further enacted, that no Sheriff or Under-sheriff, nor any or either of their deputies, agents, bailiffs or servants, nor any person or persons who shall purchase any hay, straw, chaff, turnips, grass or grasses, or other produce and things hereinbefore mentioned, under the provisions of this Act, nor his, her or their servant or servants, shall be deemed or taken to be a trespasser by reason of his, her or their coming upon or remaining in possession of any barns or other buildings, yards or fields, for the purpose of threshing out or consuming any straw, hay, turnips or other produce hereinbefore mentioned, under the provisions of this Act, or for doing any matter or thing whatsoever, fit and necessary to be done for the purpose of executing the same, and carrying into effect all stipulations contained in any agreement made under such provisions, though such acts shall have been done by such Sheriff or other officer, and by such person or persons, his, her or their servants, after the return of the process under which such Sheriff or other officer shall have acted.

Assignee of

"11. And be it further enacted, that no assignee of any bankrupt, or

of any insolvent debtor's estate, nor any assignee under any bill of sale, bankrupt, nor any purchaser of the goods, chattels, stock or crop of any person or persons engaged or employed in husbandry, on any lands let to farm, shall take, use or dispose of any hay, straw, grass or grasses, turnips or other roots, or any other produce of such lands, or any manure, compost, ashes, seaweed or other dressings intended for such lands, and being thereon, in any other manner, and for any other purpose, than such bankrupt, insolvent debtor, or other person so employed in husbandry, ought to have taken, used or disposed of the same, if no commission of bankruptcy had issued, or no such assignment or assignments had been executed or sale made." &c. not to take crop in any other way than bankrupt would have been entitled to do.

The Sheriff may seize leases or terms for years, and, to use the words of Lord Kenyon, "it is impossible to suggest any possession of a certain term that is not the subject-matter of a seizure by the Sheriff under a *feri facias* (k); so a term acquired by marriage may be taken in execution for the husband's debt; so an annuity for years (l); and it seems that an outstanding term vested in a trustee upon trust to attend the inheritance may be seized in an execution against the *cestui que trust*, the owner of the inheritance (m); whether by the statute of frauds he can sell an estate *pur autre vie* has been doubted; the better opinion seems to be in the negative (n).

Terms for years.

Annuity for years.

Outstanding term to attend inheritance.

Estate pur autre vie.

Any money, bank notes, (whether of the Governor and Company of the Bank of England, or of any other bank or bankers,) cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, are expressly leviable by virtue of the twelfth section of the recent statute; this seems to import every security for the payment of money, that is, such as on the face of it imports to be a security for money; if so, guarantees and deeds placed with the defendant as a collateral security cannot be seized.

Money, bank notes, &c.

Having thus shown what things are seizable under a *feri facias*, it is next proposed to consider what are not. The Sheriff cannot seize fixtures in a house where the freehold is in the debtor (o); nor any thing fixed to the freehold and which go

What cannot be seized under this writ.

(k) *Taylor v. Cole*, 3 T. R. 294; and see *Westmorland v. Smith*, 1 M. & Ry. 137; *Palmer's case*, 4 Co. 74; 2 Show. Rep. 85; Cro. Eliz. 584; *Stevens v. Donston*, 1 B. & A. 230; *Doe d. James v. Brawn*, 5 B. & A. 243; 6 Taunt. Rep. 670.

(l) *York v. Twin*, Cro. Jac. 1950; *Farr v. Newman*, 4 T. R. 638.

(m) *Doe d. Phillips v. Evans*, 1 Cr. & M. 450; 3 Tyr. 339.

(n) 29 Car. 2, c. 3; Comb. 291.

(o) *Wynne v. Ingleby*, 5 B. & A. 625; 1 D. & R. 247, S. C.

to the heir and not to the executor (*g*); nor an estate in fee or for life (*r*); nor a mere equitable interest in a term of years (*s*); nor an equity of redemption (*t*); nor goods in custody of the Sheriff under a former execution, unless it were fraudulent, or unless he has returned *nulla bona* to the former writ (*u*).

Nor a stranger's property.

It is likewise at the Sheriff's peril that he take the goods of any other person than of him against whom the writ is issued; thus, goods *legally* vested in a trustee before marriage for the benefit of the wife cannot be taken in execution for the husband's debt, although they are *actually* in his possession at the time (*x*); nor the goods of a woman cohabiting with the defendant, although she passes for his wife (*y*); nor the goods of a trader who has previously become bankrupt (*z*); nor the goods of a testator or intestate for the personal debt of the executor or administrator (*a*); so when the growing crops of a tenant were seized under a *fi. fa.*, and afterwards, but before any sale, a writ of possession on a demise prior to the teste of the *fi. fa.*, was delivered to the Sheriff, it was holden that they did not belong to the tenant, as he was merely a trespasser from the day of the demise laid in the declaration, and therefore that they could not be sold (*b*).

Bankrupt.
Executor.

Ambassador.

The Sheriff cannot seize the goods and chattels of ambassadors or other public ministers of foreign princes or states at this Court or their domestic servants (*c*); nor the goods ecclesiastical of clergymen—only the bishop (*d*).

Clergymen.

This writ may be executed on any day except Sunday, by day or by night. The Sheriff must execute it within a *reason-*

(*g*) *Poole's case*, 1 Salk. Rep. 368; *Elwes v. Maw*, 3 East Rep. 38; Com. Dig. (Execution).

(*r*) 3 Co. Rep. 13.

(*s*) *Scott v. Scholey*, 8 East Rep. 467; *Metcalf v. Scholey*, 2 N. R. 861.

(*t*) *Ibid.*, and *Lyster v. Dolland*, 1 Ves. jun. 431.

(*u*) *Towne v. Crowder*, 2 C. & P. 355; 3 Mod. 236.

(*x*) *Cadogan v. Kennett*, Cowp. Rep. 432; *Isod v. Lamb*, 1 Cr. & J. 35.

(*y*) *Glasspoole v. Young*, 9 B. & Cr. 696.

(*z*) *Smallcombe v. Cross*, 1 Lord Raym. 252; *Giles v. Glover*, 2 M. & Sc. 197; *Godson v. Sanctuary*, 4 B. & Ad. 255; as to an execution upon after-acquired property, see *Barrow v. Poole*, 1 B. & Ad. 629; 4 Bing. 493; as to executions protected by the 6 Geo. 4, c. 16, s. 81, 1 Will. 4, c. 7, s. 7, see *post*.

(*a*) *Farr v. Newman*, 4 Term Rep. 621.

(*b*) *Hodgson v. Gascoigne*, 5 B. & Ald. 88.

(*c*) 7 A. c. 12, s. 3.

(*d*) 2 Inst. 472; 2 Mod. Rep. 257.

able time after it is delivered to him, and he is bound to sell within a reasonable time, without a *venditione exponas* (e); it may be executed at any time before it is returnable, even at any time on the day on which it is made returnable, if made returnable on a particular day (f). When executed.

By 3 & 4 Will. 4, c. 67, s. 2, "all writs of execution may be tested on the day on which the same are issued;" it does not say they *must* be tested on that day, therefore a *fi. fa.* on a judgment, signed after defendant's death in vacation, tested on the last day of the preceding term, was holden regular (g); so in another case the doctrine of relation was considered regular, *quoad* the teste of the writ of *fi. fa.* "The objection (says Tindal, C. J.) *should have been to the judgment*" (h). In case of death before or after judgment.

If *after* the writ issues, the defendant dies, it may, it seems, be executed on the goods in the hands of the executor, &c. So *è converso* if plaintiff dies; or if there be no executor or administrator, the money must be brought into Court until it be claimed by the representative (i). In case of death after execution issued.

The same Sheriff must begin and end the execution, even although out of office before the sale (k). Same Sheriff must begin and end.

The officer enters and seizes part in the name of the whole, and makes an inventory, and leaves a man in possession; and then within a reasonable time (which is allowed him for the purpose) either removes them off the premises to a place of safe custody, until they can be sold, or sells them on the premises with the consent of the defendant, or of the person on whose premises the goods are (l). If the Sheriff wilfully delay to sell for an *unreasonable* time, and any injury accrued therefrom to the plaintiff or defendant, he would be liable to an action (m); he Mode of executing writ.
Sale.

(e) *Brown v. Jarvis*, 5 Dowl. P. C. 281; *Jacobs v. Humphrey*, 2 Cr. & M. 413, and cases cited.

(f) *Towne v. Crowder*, 2 C. & P. 355; 2 Saund. 101.

(g) *Brocher v. Pond*, 2 Dowl. 472. Parke, B.

(h) *Watson v. Maskell*, 2 Dowl. 310.

(i) *Bac. Abridg. Executor* (C);

Clerk v. Withers, 1 Salk. Rep. 323; *Fothergill v. Walton*, 4 Bing. 711, n.

(k) *Clerk v. Withers*, *supra*.

(l) *Cole v. Davies*, 1 Ld. Raym. 724; *Blades v. Armsdale*, 1 M. & S. 711; 5 Taunt. Rep. 198.

(m) *Aireton v. Davis*, 3 M. & Sc. 138; *Jacobs v. Humphrey*, 2 Cr. & M. 413.

may sell them by private contract or public auction (*n*); they must be *sold* if the debt, &c. is not satisfied (*o*); there is no objection to selling them to the *plaintiff* at their real value (*p*); if an inadequate price be offered, he should not sell but return that they remain in his hands for want of buyers (*q*).

Sale of
terms for
years.

On selling a term of years, it seems doubtful whether the purchaser, to obtain actual possession, is driven to his ejectment, or may enter without. I am inclined to think he may without, for a person who has a right of entry may enter *peaceably*, and being in possession may retain it, and plead that it is his soil and freehold (*r*).

In seizing partnership property, the Sheriff seizes the whole, and sells the defendant's undivided moiety therein, and the vendee will be tenant in common with the other partner (*s*).

Seizure of
money,
bank notes,
bills, notes,
&c.

With regard to *money* or *bank notes*, he must pay or deliver them to the plaintiff, or a sufficient part thereof.

With regard to cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, he must *hold* them as a security for the amount to be levied, until payment of them to him, with or without suit. *Note*, he is not bound to sue any party liable upon any such cheque, &c., unless the plaintiff shall enter into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in consequence thereof. The expense of the bond to be deducted out of any money to be recovered in such action (*t*).

Effect of the
delivery of
writ to the
Sheriff and
subsequent
transfer.

What effect the delivery of the writ to the Sheriff has upon the property of the defendant a recent decision of the Court of Exchequer has placed in its true point of view (*u*). *Mr. Baron Parke* says, "it is perfectly clear to me, both upon decided cases and the reason of the thing, that after a writ of execution has

(*n*) *Woodgate v. Knatchbull*, 2 T. R. 157.

(*o*) *Bealy v. Sampson*, 2 Vent. Rep. 95; *Leader v. Danvers*, 1 Bos. & P. 360; *Bac. Abr. Execution* (C).

(*p*) *Ibid*.

(*q*) *Keightley v. Bird*, 3 Camp. 521; *sed vide* 1 Stark. Rep. 43.

(*r*) *Taylor v. Cole*, 3 T. R. 295.

(*s*) Tidd, Pr. 9th edit. 1807; *vide* 3 C. & P. 306.

(*t*) See bond of indemnity, *post*, p. 333.

(*u*) *Samuel v. Duke*, 3 M. & W. 630, and authorities cited; see also *Ross on Vend. & Purch. of Personal Property*, 171.

been delivered to the Sheriff, the defendant may convey his property ; but that the Sheriff has a right to the execution, notwithstanding the transfer. Since the Statute of Frauds, the right which was given to the Sheriff by the writ to seize property no longer speaks from the *teste* of the writ, *but from the time of its delivery*, upon the receipt of which the Sheriff is to levy ; but subject to the execution, the debtor has a right to deal with his property as he pleases ; and if he transfers it in *market overt*, the right of the Sheriff ceases altogether ;" in other words, if the defendant transfers his property after the delivery of the writ to the Sheriff, which he may do, the Sheriff must execute the writ upon them, although in the hands of a *bond fide* purchaser ; for by the delivery of the writ to him, the execution creditor obtained a *quasi lien* upon them, (for such is the legal import of the words *binding the property* when applied to the delivery of the writ to the Sheriff,) and had a right to follow them into whose hands soever they might pass, except the transfer took place in *market overt*, in which case the right of the Sheriff ceased altogether.

Sheriff must levy if sale was not in market overt.

It has been before observed that he must at his peril execute the writ upon the property of the person named therein (z) ; and upon this principle he must not execute it upon the property of a trader who has committed an act of bankruptcy ; for it is now clear that a Sheriff who seizes and sells the goods of a bankrupt under a *fi. fa.* before *fiat*, but after an act of bankruptcy, without notice of the act of bankruptcy, is liable in *trover* to the assignees (a).

In case of a prior act of bankruptcy.

And upon the 7 Geo. 4, c. 57, (Insolvent Act,) the Sheriff was holden liable in *trover* for having sold, after notice of assignment to the provisional assignee, the goods of an insolvent taken in execution under a judgment on *cognovit* after the commencement of the insolvent's imprisonment, but before the assignment to the provisional assignee (b).

In case of insolvency and order of Court.

(s) It seems useless to impanel a jury to inquire in whom the property is vested, for the evidence is inadmissible ; *Glossop v. Pole*, 3 M. & S. 175.

(a) *Balme v. Hutton*, 4 Scott, 587, 717 ; 9 Bing. 471 ; 3 M. & W. 152 ; *Cartisle v. Garland*, 10 Bing. 452 ;

3 Tyr. 705 ; see also *Cooper v. Chitty*, 1 Smith's Leading Cases, 220 ; vide "*Interpleader Act*," post, 345.

(b) *Groves v. Cowham*, 10 Bing. 5 ; see also 1 & 2 Vict. c. 110, s. 37, as to the time when the the property vests in the provisional assignee.

Executions more than two calendar months before fiat.

Note.—All executions *bond fide* executed or levied more than two calendar months before the issuing of the *fiat* are valid, notwithstanding any prior act of bankruptcy, provided the execution creditor has not, at the time of executing or levying, notice of any prior act of bankruptcy (c).

Executions within the two months.

As to executions *within* two calendar months of the date of the fiat, Baron Parke says, "the creditor who has issued execution on a judgment *after verdict*, though within the two months, is entitled to a preference if the *seizure* was before an act of bankruptcy, but when the judgment is by default or confession (*not obtained adversely* (d)), then, to entitle the creditor to a preference, there must have been *a sale as well as a seizure*.

Several writs.

If two writs of *fiat facias* against the same person are delivered to the Sheriff, he must execute that which was first delivered to him, unless the first writ or the possession under it were fraudulent (e); the goods, however, are *bound* by the second writ from the date of the delivery of it to the Sheriff, subject to the first execution (f); when the first was set aside by rule of Court, and the Sheriff paid the money to the defendant as he was ordered by the rule, he was holden liable to the plaintiff in the second action to the extent of the money levied on the first (g); should he seize under the second writ *and sell*, the sale will be valid, and the property pass to the vendee, but the Sheriff will be liable in damages to the execution creditor, whose writ was firstly delivered to him (h).

Fraction of a day inquirable.

The law admits of an inquiry into the fraction of a day (i).

(c) 6 Geo. 4, c. 16, s. 81, applies to all executions levied more than two months before, &c. Sect. 108 applies only to executions on judgments by default or confession or nil dicit, when the seizure has taken place *within* two months, &c.

(d) 1 Will. 4, c. 7, s. 7, the words "*commenced adversely*," preclude a judgment on a warrant of attorney; *Crossfield v. Stanley*, 4 B. & Ad. 87; *Godson v. Sanctuary*, 4 B. & Ad. 264; see also *Wymer v. Kemble*, 6 B. & Cr. 479; *Notley v. Buck*, 8 B. & C. 160; *Giles v. Glover*, 9 Bing. 128.

(e) *Hutchinson v. Johnson*, 1 T. R. 729; *Payne v. Drew*, 4 East, Rep. 523; *Lovick v. Crowder*, 8 B. & Cr. 132; *Far v. Newman*, 4 Term Rep. 651.

(f) *Ibid.*; *Jones v. Atherton*, 7 Taunt. Rep. 56; *Saunders v. Bridges*, 3 B. & A. 95.

(g) *Ibid.*

(h) *Payne v. Drew*, 4 East, Rep. 523, and authorities there referred to.

(i) *Bower v. Bromidge*, 6 Car. & P. 140.

The *bona fides* of the execution seems an inquirable fact ; thus where goods were taken under a *fi. fa.*, but colourably only to defeat a claim for freight, the Sheriff was holden liable (*k*). Intention of executing writ inquirable into.

If the defendant pays, or tenders the debt before execution, the Sheriff cannot do execution after, if he do, trespass lies (*l*).

Payment to the Sheriff is a good payment under this writ (*m*). Execution after tender or payment.

If any surplus remains in the Sheriff's hands, he may keep it until the defendant *demand*s it of him (*n*). Surplus how disposed of.

RETURNS.

Nulla Bona (o).

The within-named *G. T.* hath no goods, chattels, money, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in my bailiwick, whereof I can cause to be levied the [debt and] damages within-mentioned, or any part thereof.

The answer of *G. A.*, Esq., High Sheriff.

Nulla Bona and a Benefice.

The within-named *G. T.* hath no goods, &c. in my bailiwick whereof I can cause to be made the damages [debt and damages] within-mentioned, or any part thereof ; and I do hereby further certify that the said *G. T.* is a beneficed clerk [having no lay fee in my bailiwick], that is to say, rector of the rectory [or as the case may be] and parish church of *M.*, in the county of *W.* and diocese of *C.*

The answer of *G. A.*, Esq., High Sheriff.

Fieri Feci.

By virtue of this writ to me directed and delivered, I have caused to be levied of the goods, &c. of the within named *G. T.* the [debt and] damages within mentioned, which I have ready at the time and place within

(*k*) *Lucas v. Nockells*, 10 Bing. Rep. 157 ; this is a decision of the House of Lords ; *Baron Parke* dissentiente, in favour of whose judgment individually I entertain a strong opinion.

(*l*) 1 Keb. Rep. 655 ; *Noy*, 56 ; *Dalt.* 529.

(*m*) *Taylor v. Bekon*, 2 Jon. 97 ; 5 Mod. Rep. 296 ; *Cro. Eliz.* 504 ; *Dalt. supra* ; *ante*.

(*n*) *Noy*, 59.

(*o*) This is the proper return, not only where the defendant never had any goods, &c., but also where they have ceased to be his by his own act, or by act and operation of law, as in the

case of bankruptcy or insolvency, it is no return that the defendant is a bankrupt ; *Cooper v. Chitty*, 1 Burr. Rep. 20 ; *Coppendale v. Bridger*, Burr. 818 ; 2 M. & W. 390 ; when the return is *nulla bona tastatoris*, the form may be readily adapted from this ; see *post*, " *Bond of Indemnity*," " *Interpleader Act* ;" if out of office the return is made in the name of the *late* Sheriff, and the present Sheriff indorses it thus : " This writ as above indorsed was delivered by the above-named late Sheriff to me the under-named now Sheriff at the time of his going out of office.

The answer of *G. A.*, Esq., Sheriff."

mentioned, to be rendered to the within named *A. B.*, as within I am commanded.

The answer of *G. A. Esq.* High Sheriff.

Fieri Feci as to Part, and Nulla Bona as to Residue.

By virtue of this writ to me directed and delivered, I have caused to be levied of the goods, &c. of the within named *G. T.* the sum of £ , which I have ready at the time and place within mentioned, to be rendered to the within *A. B.* in part satisfaction of his [debt and] damages; and I do hereby further certify that the said *G. T.* hath no goods, &c. within my bailiwick, whereof I can cause to be levied the residue of the [debt and] damages, or any part thereof, as within I am commanded.

The answer of *G. A. Esq.* High Sheriff.

Fieri Feci and Payments to Landlord, &c.

By virtue of this writ to me directed and delivered, I have caused to be levied of the goods, &c. of the within named *G. T.* the sum of £ , part whereof I have paid to Sir *G. M. Bart.*, the landlord of the premises whereon the said goods, &c. were seized for rent [not exceeding one year] due to him for the said premises at last, £ , further part thereof I have paid to *E. F.* for Queen's taxes due and owing to her Majesty from the said *G. T.* for and in respect of the said premises, and £ , further part thereof I have, &c., and £ residue thereof I have ready at the time and place within mentioned, to render to the said *A. B.* in part satisfaction of his [debt and] damages; and I do hereby further certify that the said *G. T.* hath no goods, &c. in my bailiwick, whereof I can cause to be levied the residue of the said [debt and] damages, or any part thereof, as within I am commanded.

The answer of *G. A. Esq.* High Sheriff.

Fieri Feci and that they remain in his Hands for want of Buyers.

By virtue of this writ to me directed and delivered, I have taken goods and chattels of the within named *G. T.* to the value of £ within mentioned, which remain in my hands for want of buyers; therefore I cannot have that money, or any part thereof, at the time and place within contained, as I am within commanded.

The answer of *G. A. Esq.* High Sheriff.

When Part has been sold, and the Rest remain in Hand, &c.

By virtue, &c., and have sold thereof to the value of £ , which money I have ready at the time and place within contained, but the residue of the said goods and chattels remain in my hands for want of buyers.

The answer of *G. A. Esq.* High Sheriff.

Bill of Sale from Sheriff.

To all to whom these presents shall come, greeting: Whereas, by virtue of her Majesty's writ of fieri facias, issued out of her Majesty's Court of , at Westminster, to me directed and delivered, for levying £ on the goods, chattels, &c. of *G. T.*, which *A. B.* in the said Court hath recovered against him, as by the said writ, returnable on , may more at large appear, I, *G. A. Esq.* High Sheriff of the county of *W.* have taken into my hands the several goods, chattels, &c. of the said *G. T.* hereafter mentioned, that is to say [*here set them out.*] Now know ye, that I, the said *G. A.*, for and in consideration of the sum of £ to me in hand paid by the said *A. B.*, do hereby, as much as in me lieth, by virtue of my said office, fully and absolutely bargain, sell, and deliver to

the said *A. B.* his executors, administrators and assigns, the said goods and chattels, to have, hold, and enjoy the same, as his, her, and their own proper goods and chattels, for ever. In witness whereof I have hereunto set my hand and seal the day of , A. D. *G. A.*

Signed, sealed, and delivered in the }
presence of me , of . }

Condition of Bond, to indemnify Sheriff for selling or withdrawing.

Whereas the above-named *G. A.*, as High Sheriff of the county of *W.*, by virtue of her Majesty's writ of fieri facias to him directed, against the goods and chattels of *G. T.*, issued at the suit of *A. B.*, out of her Majesty's Court of at Westminster, and there returnable on , and whereby he was to cause to be levied of the goods, chattels, &c of the sum of £ , hath seized and taken divers goods and chattels, as the proper goods and chattels of the said *G. T.* in execution : and whereas, since the seizing and taking of the said goods and chattels in execution as aforesaid, the said goods and chattels and each and every part thereof, have been claimed by one who hath given notice to the said Sheriff not to proceed to a sale of the said goods and chattels, or to pay over the money arising from the sale thereof, to the said *A. B.* : and whereas the said *A. B.* hath applied to the said Sheriff, and requested him to sell the said goods and chattels so seized as aforesaid, under and by virtue of the said writ of fieri facias, notwithstanding such claim and notice, and to pay to the said *A. B.* the money arising from the sale thereof, in satisfaction of the said sum of money directed to be levied by the said writ of fieri facias, which the said *G. T.* has consented to do upon being indemnified for so doing [or "abandon the possession thereof and return *nulla bona* to the said Court."] Now the condition of the above written obligation is such, that if the above bounden *A. B.*, his heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, well and sufficiently save harmless and keep indemnified the said Sheriff, his Under-Sheriff, deputy and officers, and each and every of them, of, from, and against all losses, costs, charges, damages, and expenses, which he or they shall or may sustain, suffer, bear, pay, expend, or be put unto, for or by reason or means of seizing or selling the said goods and chattels, so seized and taken in execution as aforesaid, or paying unto the said *A. B.* the money arising from the sale thereof, in satisfaction of the said sum of £ , so directed to be levied by the said writ of fieri facias, or for or by reason of abandoning the possession of the said goods and chattels, and returning *nulla bona* to the said Court; and also of, from, and against all action and actions, suit and suits, or any proceeding or proceedings at law or equity, which now are, or shall or may at any time or times hereafter be brought, commenced, or prosecuted, rightfully or wrongfully, against the said Sheriff, his Under-Sheriff, deputy and officers, or any or either of them, for or on account, or by reason or means of the seizing or selling the said goods and chattels under the said writ of fieri facias, or paying unto the said *A. B.* the money arising from the sale thereof as aforesaid, or for or by reason or means of any other act, matter, cause or thing whatsoever, relating thereto, or to the execution of the said writ of fieri facias, then the above written obligation to be void, otherwise to stand and remain in full force, vigour and effect.

Signed, sealed, and delivered, }
in the presence of me, of . }

A. B.

(p) As the case may be; in selling "a term of years," in the operative part say, "bargain, sell, assign, trans-

fer, and set over all title, estate, right and interest of the defendant of and in the same;" vide 3 Term R. 294.

SECTION XI.

ELEGIT.

This writ has likewise undergone a vital change by the recent statute (a).

Elegit given
by statute
of West-
minster.

The writ (be it remembered) was founded on the statute of Westminster 2, c. 18, (13 Edw. 1,) which enacted, "that when a debt is recovered or acknowledged in the king's court, or damages awarded, it shall be in the *election* of him who sues for such debt or damages to have a writ of *feri facias* to the Sheriff for levying the debt of the lands and chattels, or that the Sheriff deliver to him all the chattels of the debtor (saving only his oxen and beasts of his plough) and a *moiety* of his land until the debt be levied by a reasonable price or extent."

Statute of
Frauds as
to trust
estates.

The Statute of Frauds, 29 Car. 2, c. 3, (which subjected *trust* estates to execution against *cestui que trust* just as if he had been seised of the legal estate,) enacts, "that it shall be lawful for every Sheriff or other officer, to whom any writ or precept is directed, at the suit of any person or persons of, for, and upon any judgment, statute or recognizance, to do, make and deliver execution unto the party in that behalf suing of all such lands, tenements, rectories, tithes, rents and hereditaments as any other person or persons are in any manner seised or possessed *in trust for him against whom execution is so sued* (b), like as the Sheriff or other officer might or ought to have done, if the said party against whom execution is so sued had been seised of such lands, &c. of such estate as they are seised of in trust for him *at the time of the said execution sued*; which lands, &c. by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seised or possessed in trust for the person against whom such execution shall be sued," &c.

When prop-
erty bound
under Sta-
tute of
Frauds.

1 & 2 Vict. c. 110, s. 11, after reciting that the existing law was defective in not providing adequate means for enabling judgment creditors to obtain satisfaction from the property of their debtors, and it was expedient to give judgment creditors

(a) 1 & 2 Vict. c. 110, s. 11.

(b) The lands of *cestui que use* were made liable to execution by 1 Rich. 3, c. 1, but when *uses* came to be exe-

cuted and a new estate arose under the denomination of *trusts*, under the 27 Hen. 8, c. 10, this enactment became necessary.

more effectual remedies against the real and personal estate of their debtors than they possessed under the existing law, it is enacted, " that it shall be lawful for the Sheriff or other officer to whom any writ of *elegit*, or any precept in pursuance thereof, shall be directed at the suit of any person, upon any judgment which at the time appointed for the commencement of this act shall have been recovered, or shall be thereafter recovered in any action in any of her Majesty's superior Courts at *Westminster*, to make and deliver execution unto the party in that behalf suing of *all such lands, tenements, rectories, tithes, rents and hereditaments of copyhold or customary tenure* (c) as the person against whom execution is so sued, or any person in trust for him, shall have been seised or possessed of *at the time of entering up the said judgment or at any time afterwards*, or over which such person shall, at the time of entering up such judgment or at any time afterwards, have any disposing power which he might, without the assent of another person, exercise for his own benefit, in like manner as the Sheriff or other officer may now make and deliver execution of one moiety of the lands and tenements of any person against whom a writ of *elegit* is sued out; which lands, tenements, rectories, tithes, rents and hereditaments, by force and virtue of such execution shall accordingly be held and enjoyed by the party to whom such execution shall be so made and delivered, subject to such account in the Court out of which such execution shall have been sued out as a tenant by *elegit* is now subject to in a court of equity: Provided always, that such party suing out execution, and to whom any copyhold or customary lands shall be so delivered in execution, shall be liable and is hereby required to make, perform and render to the lord of the manor, or other person entitled, all such and the like payments and services as the person against whom such execution shall be issued would have been bound to make, perform and render in case such execution had not issued; and that the party so suing out such execution, and to whom any such copyhold or customary lands shall have been so delivered in execution, shall be entitled to hold the same until the amount of such payments and the value of such services as well as the amount of the judgment shall have been levied: Provided also, that as against

Property when bound under the new imprisonment for debt bill.

Proviso as to copyhold lands.

Proviso as

(c) The words introduced into the new statute differ little from those in

the Statute of Frauds regarding trust estates.

to purchasers, mortgagages, or creditors.

Main features of the new act.

purchasers, mortgagees or creditors, who shall have become such before the time appointed for the commencement of this act, such writ of *elegit* shall have no greater or other effect than a writ of *elegit* would have had in case this act had not passed."

The main features of the recent statute then are to extend the operation of the writ of *elegit* from a *moiety* of the lands, &c. to the *whole*; from freehold lands to copyhold and customary; and as to trust estates, to alter the period of time when the property was bound, viz. from the time *when the writ of elegit was sued out* to the time when *judgment is entered up against the debtor*.

Writ (d).

Victoria, &c. to the Sheriff of W. greeting: Whereas A. B. lately in our Court before *us* (e) at Westminster, by the judgment of the same Court, recovered against C. D. £ which in our said Court were adjudged to the said A. B. for his damages which he had sustained, as well on occasion of the not performing certain *promises* (f) [*if in debt* "recovered against C. D. a certain debt of £ , and also £ which in our same Court were adjudged to the said A. B. for his damages which he had sustained as well on occasion of the detention of the said debt"] as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted as appears to us of record; and afterwards the said A. B. came into our Court before us at Westminster, and according to the form of the statute in such case made and provided chose to be delivered to him all the goods and chattels of the said C. D., except his oxen and beasts of the plough, and also all the lands, tenements, rectories, tithes, rents and hereditaments of the said C. D. in your bailiwick; to hold to him the said goods and chattels as his proper goods and chattels, and to hold the lands, tenements, rectories, tithes, rents and hereditaments of the said C. D. aforesaid to him and his assigns as his freehold, according to the form of the said statute, until the damages [or "debt and damages"] aforesaid should be thereof fully levied; therefore we command you, that without delay you cause to be delivered to the said A. B., by a reasonable price and extent (g), all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all the lands, tenements, rectories, tithes, rents and hereditaments of the said C. D. in your bailiwick, whereof the said C. D., or any person or persons in trust for him on the day of , in the year of our reign (h), on which day the judgment aforesaid was given, or ever afterwards was seised; to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments of the said C. D. and his assigns as his freehold (i), according to the form of the statute afore-

(d) As to the mode of issuing, signing, sealing, &c. *vide ante*, p. 317.

(e) Or in C. P. "before our justices," or in *Exch. of Pleas* "before the barons of our Exchequer."

(f) As the form of action may be.

(g) The word "*price*" refers to the goods and chattels, and "*extent*" to

the lands; *Palmer's case*, 4 Rep. 74 b; 2 Inst. 396.

(h) The day on which judgment was entered up, *ante*, p. 335.

(i) Yet the tenant by *elegit* has not a freehold but a chattel interest only, which goes to his executors; Co. Litt. 42; 2 Bl. Comm. 161.

said, until the damages [or "debt and damages"] aforesaid shall be thereof fully levied, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness, &c.

By virtue of this writ the Sheriff delivers to the execution creditor in manner hereinafter mentioned.

All the goods and chattels of the defendant, except his oxen and beasts of plough (*k*). What extendible.

The whole of his lands (*l*), whether in fee or in tail, for life or for years, copyhold or customary, or in reversion (*m*); his tenements (*n*), rectories (*o*), tithes, rents (*p*) or hereditaments, whether *legally* vested in him, or of which any other person *in trust* (*q*) for him shall have been seised or possessed of *at the time of entering up the judgment, or at any time afterwards* (*r*), or over which such person shall, at the time of entering up such judgment or at any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit (*s*).

The mode of executing this writ is as follows:—upon receipt of it, the Sheriff impanels a jury to inquire of all the goods and chattels of the debtor and appraise the same, and also to inquire as to his lands, tenements, rectories, tithes, rents and hereditaments, (the extent and valuation of the lands, &c. and the appraising of the goods must be by an inquest by the oath of Mode of executing writ.

Must be by inquest.

(*k*) Terms for years and interest out of land are extendible; 2 Inst. 395; 3 Co. 12; 8 Co. 171; Cro. Eliz. 584; Moore, 876; 1 Bowl. 38; Hob. 58; but a term of years outstanding in a trustee seems not extendible under this statute; *vide* Scott v. Scholey, 8 East, Rep. 467; Metcalf v. Scholey, 2 N. R. 461; 2 Vern. 248; 2 Saund. 11; *vide* Phillips v. Evans, 1 C. & M. 450; nor an equity of redemption, whether of a freehold estate or of a term of years; Plunket v. Penson, 2 Atk. Rep. 290; Lyster v. Dolland, 1 Ves. jun. 431; and see 8 East, Rep. *supra*; nor is a *tenement* which cannot be granted over, as the office of *fiacer*, Dyer, 7, or the like.

(*l*) 2 Inst. 395; 1 Roll. Abr. 888;

3 Rep. 9; and see Morris v. Jones, 3 D. & Ryl. 603.

(*m*) 1 Roll. Abr. 894; 2 Leon. 113.

(*n*) *Ibid.*; Gilbert, Execution, 38.

(*o*) *Vide* Jenk. Rep. 407; 3 Bos. & Pul. 327; Dalt. 136.

(*p*) Wotton v. Shirt, Cro. Eliz. 742, 656; Bro. Elegit, 13; 3 Rep. 9.

(*q*) A trust in favour of defendant and another person is not within the statute; Doe v. Greenhill, 3 B. & A. 684; *vide* also Harris v. Booker, 4 Bing. 96.

(*r*) The execution now relates back to the judgment.

(*s*) Doe d. Wigan v. Jones, 10 Barn. & Cr. 459; Skeels v. Shearley, 3 M. & C. 112.

street, in _____, in the said county, on the _____ day of _____, in the _____ year of the reign of our sovereign lady Victoria, by the grace of God of Great Britain and Ireland Queen, defender of the faith, and so forth, before me _____, Sheriff of the said county, by virtue of her Majesty's writ to me directed and hereunto annexed, on the oath of [*here name the twelve jurors*] good and lawful men of my bailiwick, who being sworn and charged, upon their oath say, that *C. D.* in the said writ named, on the _____ day of _____, in the _____ year of the reign of her present Majesty, on which day the judgment in the said writ specified was entered up against the said *C.*, was [and on the day of taking this inquisition is] seised and possessed of and in the several goods and chattels following, that is to say, [*here set forth the goods,*] as his own proper goods and chattels, and the said jurors do appraise and value the same at the sum of £ _____, which said goods and chattels I have caused to be delivered to the said *A. B.* in the writ named, to hold to him as his own goods and chattels, in part satisfaction of the debt and damages in the said writ mentioned; and the jurors aforesaid on their oath aforesaid, further say, that the said *C. D.* in the said writ named, at the time of entering up the said judgment in the said writ specified, had not, nor on the day of taking of this inquisition hath, any other or more goods or chattels, or any lands, tenements, rectories, tithes, rents or hereditaments, in my bailiwick, to the knowledge of the said jurors, which may or can be extended or appraised. In witness whereof as well I the said Sheriff as the said jurors to this inquisition have set our hands and seals the day, year and place above mentioned.

If lands,
and no
goods taken.

If lands or goods be taken, say,]—was [and on the day of taking this inquisition is] seised in his demesne as of fee, of and in a certain messuage, &c. with the appurtenances, situate in, &c. in the said county, and now in the tenure or occupation of *I. S.* at the clear yearly rent of 14*l.* in all issues beyond reprises; and also of and in a certain other messuage, &c., in the occupation of *W. P.* of the clear yearly value of £ _____ in all issues beyond reprises; which said messuage, &c., I, the said Sheriff, on the day of taking this inquisition, have caused to be delivered unto the said *A. B.* in the said writ named, at the reasonable price and extent aforesaid, to hold to him and his assigns as his free tenements, according to the form of the statute in that case made and provided, until the debt or damages in the said writ mentioned shall be thereout fully levied as by the said writ I am commanded; and the said jurors upon their said oath further say, that the said *C. D.* in the said writ named, at the time of the rendition of the said judgment in the said writ specified, had not, nor on the day of taking this inquisition hath, any goods or chattels, or any other or more lands or tenements in my bailiwick, to the knowledge of the said jurors. In witness whereof, as well I the said Sheriff, as the said jurors, have to this inquisition set our hands and seals the day and year, and at the place above-written.

the Sheriff returns that there are no lands, the inquisition need not be returned; *Stonehouse v. Even*, 2 Str. Rep. 874. Before inquisition filed the Court may examine it, and if they find fraud, partiality, &c. may stop the filing and award a new elegit; 2 Inst. 396; or that the lands are extended

at an under value; Com. Dig. *Execution* (C.), 14. If the return be void, the objection may be taken in an action of ejectment brought to recover actual possession; *Masters v. Durant*, 1 B. & A. 40; or the Court will set it aside and amerce the Sheriff; *Pullen v. Purbeck*, 12 Mod. 368.

Indorsement on Writ.

The execution of this writ appears in the schedule hereunto annexed.
The answer of *G. A.*, Esq., Sheriff.

If judgment be recovered where goods have been taken and delivered upon an *elegit*, the defendant shall be restored to the goods themselves, and not to the value of them as on restitution of goods taken on a *fiery facias* (*l*). The Court, on motion, will refer it to the master to take an account of the rent and profits, and order possession to be given up if it appear that the judgment is satisfied (*m*). The plaintiff is entitled to interest upon his judgment, over and above the sum recovered by the judgment (*n*). Restitution.

SECTION XII.

EXTENT.

This writ is not in anywise affected by the statute of 1 & 2 Vict. c. 110. How affected by recent changes.

It is a writ of execution against the *body, lands, and goods*, or the *lands and goods* of the crown debtor (*a*); and it is of two kinds—extents *in chief*, and extents *in aid*: an extent in chief is a hostile proceeding by the crown against a crown debtor, or against the debtor of a crown debtor, against whom also an extent in chief has issued; an extent in aid is when the extent is issued at the instance of a crown debtor against his debtor *to aid* his payment of the crown debt (*b*). What it is.
Extents in chief and in aid.

When by the inquisition debts are found and seized into the Queen's hands, the Queen, on an affidavit of danger, and a baron's *fiat*, may proceed by an immediate extent for their recovery, this is called an extent in the *second degree*; so when debts are found on an extent in the second degree, the crown may have an extent in the *third degree* and so forth (*c*). Extents in second and third degree, what.

(*l*) *Goodyere v. Ince*, Cro. Car. 246; 225; 33 Hen. 8, c. 39, s. 50; *Rex v. Dyer*, 363; 1 Roll. Abr. 778. *Lambe*, M'Clelland, Rep. 402.

(*m*) *Price v. Varney*, 3 B. & C. 733.

(*n*) *Godfrey v. Watson*, 3 Atk. 517;

Bath v. Bradford, 2 Ves. sen. 589.

(*a*) West on Extents, 79, 187,

(*b*) *Rex v. Shackle*, 11 Price, 772;

57 Geo. 3, c. 117.

(*c*) Gilb. Exch. 177; West, 303;

Ewin's Ca. Parker, 259.

Whence
issued.

Teste, seal-
ing, signing,
&c.

The writ of extent issues out of the equity side of the Exchequer upon the *fiat* of a baron. It is tested on the day it issues (*d*) by the chief baron, signed by the Queen's remembrancer, and sealed with the Exchequer seal; it is made returnable on a *general* return day in term.

Substance
of writ.

The writ, after reciting the debt due to the crown, commands the Sheriff to take the defendant, and to inquire by a jury what lands and tenements, and of what yearly value, the defendant had on the day when he first became a debtor to the crown, or at any time since, [or in the case of a simple contract debt, what lands, &c. he now hath,] and what goods and chattels, and of what kind and value, and what debts, credits, specialties, and sums of money, the defendant or any person *in trust for him or to his use*, and all in his bailiwick, and to appraise and extend the same for the Queen; but not to *sell* the goods and chattels until he shall be otherwise commanded (*e*).

What seizure
under
this writ.
Defendant's
person.

The *capias* clause of the extent is not usually enforced (*f*); and a defendant in custody under an execution in aid, was ordered to be discharged, when the sheriff had also seized property more than sufficient to cover the demand (*g*). If arrested, he cannot be admitted to bail (*h*); a bankrupt may be arrested during his privilege, the crown not being bound by the Bankrupt Act.

Goods and
chattels.

All the goods and chattels (*i*) of the defendant may be seized, excepting necessary victuals for the defendant and his family, and oxen and beasts of the plough (*k*); whether vested in the defendant legally in his own right (*l*), or held in trust for him (*m*); goods pawned or demised prior to the teste of the writ, (unless the lien be satisfied,) cannot be taken on an extent (*n*); goods which

(*d*) *Rex v. Maherley*, 2 Dowl. 383; 4 Tyr. 345. *Extents in aid* must have indorsed upon them the amount of the debt stated and specified in the baron's fiat; 57 Geo. 3, c. 117; Tidd's Pr. 110.

(*e*) West on Extents, 56, that is, until a *venditioni exponas* shall issue.

(*f*) *Rex v. Plaw*, 3 Price, 94.

(*g*) *Rex v. Kinnear*, 3 Price, 536.

(*h*) *Ex parte Temple*, 2 Rose, 22.

(*i*) Goods and chattels, *ante*, p. 322. A term of years may under this writ be either extended as *land*, or appraised as a *chattel*; *Fleetwood's Case*, 8 Co. 171.

(*k*) 2 Roll. Abr. 160.

(*l*) 2 Roll. Abr. 159; see also *Britton v. Cole*, 1 Ld. Raym. 305.

(*m*) West, 116.

(*n*) *Ibid.*; *Rex v. Humphrys*, 1 M'Clel. & Y. 173.

have been distrained for rent before the *teste* of the writ, but not sold, may be seized (*o*); goods of a bankrupt may be taken, if the writ be *tested* prior to the appointment of the assignees or provisional assignee (*p*).

The freehold lands of the defendant may be seized, and *trust* as well as *legal* estates; but copyhold not (*q*); an equity of redemption may be taken (*r*); or lands over which the crown debtor has a power of revocation (*s*); an extent against the lands and tenements only of the crown debtor, without including goods or chattels, seems irregular (*t*).

Money in the defendant's possession; debts by simple contract or by specialty, although not due, the Sheriff must seize (*u*); it seems that on an extent *in chief*, the crown may seize debts found to be due to its debtor *in infinitum*; but on an extent *in aid*, not beyond the *third degree*, counting the Queen's debtor as one of the degrees (*x*).

On receipt of the writ the Sheriff issues his summons to the defendant and to all his debtors to appear and disclose the nature and particulars of such debts before the inquisition (*y*); likewise to all other persons who can speak to the defendant's property, on pain of attachment (*z*); also he summons a jury of twelve men (it must be by inquest (*a*)), who find the value of the goods, &c. as also what other goods, &c. he had at the time the defendant became indebted to the queen, or at any time since: when the jury have found the facts, the Sheriff returns the writ, with the inquisition annexed, to the Court of Exchequer, whereupon a *venditioni exponas* issues for a sale of them.

The Sheriff has no power by virtue of the extent to levy or receive *the debts* found on the inquisition, he is merely to *seize* them, which is a mere seizure in law; and upon the return of

Defendant's land.

Money, debts, &c.

Mode of proceeding on receipt of writ.

Must be by inquest. What to be inquired into.

Venditioni exponas. As to debts, &c.

(*o*) West, 101; *Rex v. Cotton*, Parker, 112; 8 Anne, c. 14, s. 1; Bunb. 269.

(*p*) *Rex v. Marsh*, 1 M'Clel. & Y. 250.

(*q*) As to a term outstanding to attend the inheritance, see M'Clel. Rep. 402, 417.

(*r*) *Rex v. Delamotte*, Forest's Rep. 162; *Rex v. Coombes*, 1 Price, 207.

(*s*) Godbolt, Rep. 289.

(*t*) *Rex v. Lamb*, M'Clel. 402.

(*u*) West, 172.

(*x*) West, 303; Parker, 259.

(*y*) *Reg. v. Newell*, Park. 269; West, 330.

(*z*) *Ibid.*

(*a*) Cro. Jac. 566.

the inquisition the Court of Exchequer will issue a *scire facias* or immediate extent to levy the debt.

Mode of
conducting
inquisition
as to wit-
nesses, &c.
May be ad-
journed.

The Sheriff must, as to witnesses, questions, &c. conduct the inquiry as in other cases, otherwise the Court will quash the inquisition (b).

The inquisition may be adjourned or another holden before the return day of the writ to find property not found by the first, in which case both inquisitions are returned to the Court.

Priority of
writs.

An immediate extent, and an extent in chief, in the second or any degree, are to be satisfied before an extent in aid of a prior teste (c); *inter se* according to their teste (d).

Fi. fa. and
an extent.

Goods seized under a fi. fa. at the suit of a subject are *before sale* liable to be taken by virtue of the Queen's extent, tested after the delivery of the fi. fa. to the Sheriff; and it makes no difference whether the extent be in chief or in aid (e).

Juryman's Oath.

You shall well and truly inquire what lands and tenements, and of what yearly value, had in my bailiwick, on the day of , in the year of the reign of her present Majesty, on which day he was found indebted to her Majesty, or at any time since, and what goods and chattels, and of what sorts and values, and of what debts, credits, specialties, and sums of money, the said , or any person or persons, to his use, or in trust for him, now hath or have in my said bailiwick, and that you appraise such goods and chattels, so that I may extend, seize and take the same into her Majesty's hands, until her Majesty shall be fully satisfied, the sum of £ due to her Majesty, upon an extent, directed to me, tested the day of , in the year of her reign.
So help you God.

Indorsement on Writ.

The within-named is not found in my bailiwick. The residue of the execution of this writ appears in the inquisition hereto annexed.
The answer of, &c.

Inquisition.

Westmorland, } An inquisition indented, taken at the house of
to wit. } known by the name or sign of the , in the said
county, the day of , in the year of the reign of our
sovereign lady Victoria, by the grace of God, of the united kingdom of
Great Britain and Ireland Queen, defender of the faith, &c. before me
, Sheriff of the said county, by virtue of her Majesty's writ of

(b) *Rex v. Bickley*, 3 Price, 454.

(c) *Rex v. Larking*, 8 Price, 683.

(d) *Reg. v. Quash*, Park. 281.

(e) *Giles v. Glover*, 2 M. & Sc. 197;

9 Bing. 128; 1 C. & F. 72; 12 Price, 2.

extent to me directed, and to this inquisition annexed, on the oath of A. B. [*here name the twelve jurors*] honest and lawful men of my bailiwick, who being sworn and charged on their oath say, that in the said writ named, on the day of , in the year aforesaid, was, and at the time of taking this inquisition is, possessed of the goods and chattels following (*f*) ; that is to say, [*here state the goods taken from the inventory,*] as of his own goods and chattels, and the said jurors do appraise and value the same at the sum of £ ; all which said goods and chattels I the said Sheriff have seized and taken into her Majesty's hands: And the jurors aforesaid, upon their oath aforesaid, further say, that , of, &c. is indebted to the said in £ for, &c., and that , of, &c. is indebted to the said in £ for goods sold and delivered to the said [*here state who are indebted, and for what*]; all which said debts, sum and sums of money, I the said Sheriff have taken and seized into her Majesty's hands: And the jurors aforesaid, upon their oath aforesaid, further say, that the said on the day of issuing the said writ was, and on the day of taking the inquisition is, seised in his demesne as of fee, of and in, &c. with the appurtenances thereto belonging, situate and being in , in the parish of in the said county, and in the possession of , of the clear yearly value of £ , in all issues beyond reprises, which I the said Sheriff have seized and taken into her Majesty's hands; and that the said hath not any other or more goods, or chattels, debts, credits, specialties, or sums of money, or any other or more lands, or tenements, in my bailiwick, to the knowledge of the said jurors, which can be extended, appraised or seized into her Majesty's hands. In witness whereof, as well I the said Sheriff, as the said jurors, to this inquisition have set our seals, the day, year, and place above-mentioned (*g*).

SECTION XIII.

INTERPLEADER ACT.

(1 & 2 Will. 4, c. 58. October 20th, 1831.)

At common law, if the property in goods taken under an execution was disputed, which frequently occurred in the case of bankruptcy, and not unfrequently between the crown and an
How Sheriff relieved at common law.

(*f*) If *lands*, &c. are taken they must be properly described, and it should appear how they came to be the defendant's property. So if *debts* are found, it should be stated for what, as for goods sold, money lent, &c.; if *bills or notes*, their dates, by whom drawn, accepted, indorsed, &c. should appear, and how they became the debtor's property.

(*g*) The Sheriff may return *non est inventus* and that the debtor hath no

goods or lands; Dalt. 234; or *cepi corpus* and the seizure of the lands; *ibid.*; or that the debtor is a clerk; Dalt. 23; or that the lands, &c. are already extended, or that another is in by descent, for that they are not to be put out of possession without a *scire facias*; Fitz. Ret. 112; a return that he has delivered such lands without saying *there are no other lands* is bad; Bowl. 37.

execution creditor, the Court, upon suggestion of these, or of any other reasonable doubt, would in general enlarge the time for making the Sheriff's return, until such right of property was determined between the claimants, or until one of the claimants had given him a sufficient indemnity (*a*); if the doubt arose from a point (*b*) of law, and not from mere matter of fact, the Court would in general interpose its equitable jurisdiction in his favour, where he acted (*c*) fairly, and was guilty of no neglect of duty; but where the doubt arose from mere matter of fact, (as the Sheriff might summon (*d*) an inquest to say whose property it was before he returned the writ,) that indulgence was granted only under special circumstances and in particular cases. Other hardships too pressed, and still do press, on the Sheriff, which do not prevail as between the claimants; he could not, for instance, nor can he, file a bill (*e*) of interpleader in equity, and the costs (*f*) of applying to the Court for enlarging the time for making his return, were not nor are they under the Interpleader Act in general allowed him.

By statute
law.

Notwithstanding, however, by the above statute a more effectual relief is afforded to Sheriffs and other officers in such cases. Sect. 6 of which, after reciting that difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the said Courts, by reason of claims made to such goods and chattels by assignees of bankrupts, and other persons not being the parties against whom such process has issued, whereby Sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such Sheriffs and other officers, enacts,

"That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such Sheriff, or other

(*a*) *Ledbury v. Smith*, 1 Ch. Rep. 294; *Wells v. Pickman*, 7 Term Rep. 174; *Thurston v. Thurston*, 1 Taunt. 120; *King v. Bridges*, 7 Taunt. 294; *Beavan v. Dawson*, 6 Bing. 566; 7 B. & Cr. 379; 1 Ch. Rep. 577; *Tidd's New Pract.* 594.

(*b*) 7 Term Rep. 174; 1 Taunt. 120; *George v. Birch*, 4 Taunt. 585.

(*c*) *Colley v. Hardy*, 5 M. & R. 123; *Timbrell v. Mills*, Bl. Rep. 205.

(*d*) 7 Term Rep. 174.

(*e*) *Slingsby v. Boulton*, 1 V. & B. 334.

(*f*) *Rex v. Cooke*, 1 M'Cl. & Y. 198; *Tidd's New Pr.* 575; *Tidd*, 9th edit. 1017.

officer made before or after the return of such process, and as well before as after any action brought against such Sheriff or other officer, to call before them by rule of Court, as well the party issuing such process, as the party making such claim, and thereupon to exercise for the adjustment of such claims, and the relief and protection of the Sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court."

The intention of this statute was to relieve Sheriffs and other officers (acting under the execution of process against goods and chattels actually taken or intended to be taken in execution, or to the proceeds or value thereof,) from the necessity of making any return to the writ, or, in case a return has been made, from the hazard of all actions which he would otherwise be exposed to; before the passing of this act, if he did not do his duty, he hazarded an expensive law suit, or if he did, he was equally in danger; to use the forcible language of Mr. J. Patteson, "*he was between two fires.*"

Intent of
Interpleader
Act.

In arranging the decisions hereon, it may be proper to consider them in the following order:

Order of
subsequent
matter and
decisions.

1. Those within the statute.
2. Those not within the statute.
3. Application, time of, &c.
4. The consequence of appearance or nonappearance of the parties.
5. Costs, &c.

The very foundation of an application under this statute is that a *claim* (*g*) has been made, and any thing short of a claim will not suffice; as for instance, the giving of a notice of a fiat of bankruptcy having issued (*h*); but if such claim is founded upon a lien (*i*) only, the Court will relieve the Sheriff; for although the statute would seem to have in view only those cases where the entirety of the property is claimed, yet a claim founded upon a lien has been holden within its purview, and the reason assigned is, for that a lien may be equal in value to the entirety; besides a claim of part will suffice, if the goods taken will suffice (*k*).

There must
be a *claim*.

The nature of the claim, whether valid or not valid, legal (*l*) or

Nature of
claim, whe-
ther good or
bad, *legal* or
equitable.

(*g*) *Isaac v. Spilsbury*, 10 Bing. 3; 2 Dowl. 211; 3 M. & Sc. 341; *Bentley v. Hook*, 2 Dowl. 339; 2 C. & M. 426.

(*h*) *Bentley v. Hook*, *supra*.
(*i*) *Ford v. Baynton*, 1 Dowl. 358.
(*k*) *Barker v. Dynes*, 1 Dowl. 170.
(*l*) *Ford v. Baynton*, 1 Dowl. 358.

equitable, so as to entitle the Sheriff to relief under the statute, is a question of some nicety for him simply as an officer: it would probably have been the safest and best rule to have given *him* relief in all cases, without regard to its validity, or to its being a legal or an equitable claim, leaving that question to be decided by and at the cost of the claimants; for as to the degree of inquiry to be made to entitle him to relief, no line can well be drawn, varying as it must with the varying circumstances of each particular case, and the Sheriff will not unfrequently be induced to apply to the Court in hopes of finding relief against conflicting claims, and be told that he did not make *sufficient* inquiry into the nature of the claim, and therefore cannot be relieved. Thus in the case of *Bishop v. Hinzman (m)*, on the Sheriff's officer going to the premises, he found a man in possession, who said "that he had taken possession of the farm on behalf of the mortgagees of the property, but that he had no orders with regard to the growing crops." A notice after this was given to the Sheriff by the mortgagee that he had taken possession of the growing crops as well as of the farm. The execution creditor not interfering, either by abandoning his *fi. fa.* or by acknowledging the claim of the mortgagee, Taunton, J. said, "I am of opinion that applications under this statute ought not to be considered as a matter of course. It is the duty of the Sheriff to make some inquiry before he comes to this Court. He is not to be spared all trouble and to abstain from making all inquiry; *but when conflicting claims are advanced, on which he cannot decide, he may then come to the Court.*" * * I think the Sheriff should have known that the mortgagees, having taken possession of the lands, had *primâ facie* taken possession of the crops. * * The judgment creditor did not object to the seizure of the mortgagees, and therefore there were no *conflicting* claims within the meaning of the act. If the judgment creditor had preferred a claim to the Sheriff, and desired him to take possession of the growing crops, the case would have been different." Assuming this case to be correctly reported, two essentials seemed in the learned judge's mind to be required to bring a case within the statute, namely, that the Sheriff should enter into the legality of the claim, to know what he could in law seize and what he could not, and, 2dly, that there should be *conflicting claims*, meaning a

(m) 2 Dowl. 166.

claim by the mortgagees, and a claim by the execution creditor *insisted upon* by him over and above that arising from the *feri facias per se* (n). So in *re the Sheriff of Oxfordshire* (o), it appeared that a *testatum fieri facias* had been delivered to the Sheriff on the 30th October, under which he levied on that day. A claim was made on the 1st November, under a bill of sale of that date. Parke, B. "Before the Sheriff applied to the Court, he ought at least to have looked at the date of the bill of sale, and if he had done so, this application would probably have been unnecessary. The rule must be discharged, and the Sheriff must pay the costs of the execution creditor." In a later case, Coleridge, J. said to counsel for the Sheriff, "Have you had any communication on the subject with the execution creditor? Must not there be an *actual dispute* to entitle the Sheriff to assistance?" And it was said by the Court that "if the execution creditor should *insist* upon the goods being sold as the property not of a partnership, but of the debtor alone, the sheriff ought to have an indemnity."

There must be conflicting or adverse claims.

The goods or money in dispute must be actually in his hands at the time of his application to the Court, to entitle him to relief (p). The circumstance of the goods seized being in the possession of a stranger (q) and of the defendant, against whom the execution issued, does not prevent the Sheriff applying. A person in actual possession of the goods (r) seized under a *fi. fa.* against the defendant, is a claimant within the act. And although the Sheriff has refused an indemnity, he is notwithstanding entitled to protection under the statute (s). And if he has a right to come to the Court while the goods are in specie, he has also a right to come after he has sold them (t). But in all these cases, the Court will protect the Sheriff only from the original seizure, and not from any subsequent misconduct (u); or according to another case (x), relieve him in respect of the adverse claims, but leave him to remain liable for any negligence

Goods or money must be actually in his hands at the time of the application.

(n) *Vide Holmes v. Mentse*, 4 Ad. & E. 127.

(o) 6 Dowl. 136.

(p) *Holton v. Guntrip*, 6 Dowl. 130; 3 M. & W. 145; *Scott v. Lewis*, 2 C. M. & R. 290.

(q) *Allen v. Gibbon*, 2 Dowl. 292.

(r) *Barker v. Dynes*, 1 Dowl. 169.

(s) *Levy v. Champneys*, 2 Dowl. 454.

(t) *Baynton v. Harry*, 3 Dowl. 344.

(u) *Lewis v. Jones*, 2 M. & W. 204.

(x) *Brackenbury v. Lawrie*, 3 Dowl. 180.

he may have been guilty of in executing the writ or in not appointing a deputy under the 3 & 4 Will. 4, c. 42.

Upon process from what Courts.

And whether the process issued out of any of the Courts at Westminster, or out of the Courts of Common Pleas at Lancaster or Durham (y).

Before or after action brought.

And as well *before* as *after* any action brought against the Sheriff or other officer (z).

Not within the statute.

The Court will not relieve the Sheriff under the act where he has paid over the proceeds of the execution to the judgment creditor (a), though he had no notice of any claim until after he had paid over the money (b); or though he may be willing to bring a similar amount into Court (c); nor where he has delivered any part of the goods to the claimant (d); nor where he accepts an indemnity (e); nor does the act apply to *conflicting executions* (f); for the writ will be a sufficient justification to the Sheriff for paying over the proceeds of the levy to the first execution creditor; and the notices signify nothing—it is a mere struggle for priority of claim; nor when he has seized goods in execution which were under a distress for rent, for it is the duty of the Sheriff to inquire whether the rent is due, and if it is, to satisfy it (g); nor when he withdraws from possession on a claim being set up, for he does not come to the Court *intending to take the goods*, but exercises his own discretion (h). So if the High Sheriff has any interest (i) on either side, or his Under-sheriff, (although the High Sheriff swears that he does not collude with him); as if the Under-sheriff (k) be the execution creditor, or partner in business of the execution creditor, the Sheriff is not entitled to relief under the Interpleader Act; and the same rule, it seems, will apply to his other (l) officers. Nor does the act apply to claims set up in consequence of proceedings in equity (m), as for instance, where parties who had filed a bill in

(y) Tidd's New Pr. 575.

(z) *Green v. Brown*, 3 Dowl. 337.

(a) *Anderson v. Calloway*, 1 Dowl. 636; 1 C. & M. 182.

(b) *Scott v. Lewis*, 1 Gale, 204; 4 Dowl. 259.

(c) *Inland v. Bushell*, 5 Dowl. 147.

(d) *Brain v. Hunt*, 2 C. & M. 418; 2 Dowl. 391.

(e) *Ostler v. Bower*, 4 Dowl. 606.

(f) *Bragg v. Hopkins*, 2 Dowl.

151; *Salmon v. James*, 1 Dowl. 369; *Day v. Waldock*, *Lawrence v. Waldock*, 1 Dowl. 523.

(g) *Haythorn v. Bush*, 2 Dowl. 641.

(h) *Holton v. Guntrip*, 6 Dowl. 130.

(i) *Dudden v. Long*, 3 Dowl. 139; 1 Scott, 281.

(k) *Ostler v. Bower*, 4 Dowl. 606.

(l) 4 Dowl. 606.

(m) *Sturgess v. Claude*, 1 Dowl. 506.

equity against the defendant as executors of his father, and which parties laid claim to the property in question as part of the father's estate; holden, that it was not such a claim as could be noticed by the Court under this statute; nor to actions for unliquidated damages (n).

The statute under consideration, be it observed, contains no clause to prohibit the Sheriff from applying to the Court as before (if he thinks fit) *to enlarge the time for making his return*, and when he cannot have relief under the statute, he should move the Court for that indulgence (o).

A motion by the Sheriff for relief under this act must originate in Court, but cause may be shown at chambers (p). One Court cannot relieve him with respect to process issuing out of another Court (q). Therefore where process is issued out of different Courts and directed to the same Sheriff, the application must be made to the respective Courts out of which the process issued.

Applica-
tion.

Motion
must ori-
ginate in
Court, but
cause may
be shown at
chambers.

The application must be made within a *reasonable* (r) time after the claim is made; *reasonable time* is construed to mean (if the claim is made in vacation) in time sufficient to enable the other parties to show cause in the term next after the claim is made. Alderson, B., "In a case like the present, the Sheriff will not be safe unless he applies within the first four days of the term" (s); if made in term, to allow the other parties to appear the same term if possible; and any delay on his part must be accounted for in the first instance. *Note*.—No supplemental affidavit is allowable, and if the Sheriff cannot come at once to the Court, being delayed by a rule of Court staying proceedings, it is his duty to watch the rule, and come within four days after it is discharged, if other parties would by his so doing be enabled to appear in the same term (t).

In what
Court.
Within
what time
application
to be made.

The affidavit in support of the application should state the seizure of the goods by the Sheriff under the execution (u), that

Affidavit,
substance
of.

(n) *Walter v. Nicholson*, 6 Dowl. 517.

(o) *Delvalle v. Plomer*, 3 Camp. 47.

(p) *Beames v. Cross*, 4 Dowl. 122;

Haines v. Disney, 2 Scott, 183; 1

Hodges, 189; *contra Shaw v. Roberts*,

2 Dowl. 25.

(q) *Bragg v. Hopkins*, 2 Dowl. 151.

(r) *Beale v. Overton*, 2 M. & W. 534; 5 Dowl. 599.

(s) 5 Dowl. 599.

(t) *Cook v. Allen*, 2 Dowl. 11.

(u) *Northcote v. Beauchamp*, 1 M. & Sc. 158.

they or the proceeds (as the case may be) are, at the time of the application, in his hands (v); and that he has been served with notice of the claim from the party or parties by whom it was made (x); that in consequence of such claim he does not know to whom the goods or proceeds thereof belong, or to whom he is liable for the same, and that he is ready to pay into Court or dispose of the subject matter of the dispute in such manner as the Court may order and direct. And where there is any delay it must be accounted for in his affidavit in the first instance, for no supplemental affidavit is allowable on showing cause (y). The Sheriff need not deny collusion with any of the parties (z); nor state that an application has been made either to the execution creditor or to the claimant for an indemnity (a).

It is not necessary for an *execution creditor* appearing on a motion under this act to produce an affidavit (b); but a *claimant* must state to the Court the nature and particulars of his claim by affidavit (c).

Affidavit.

In the Queen's Bench.

Between $\left\{ \begin{array}{l} A. B. \\ \text{and} \\ C. D. \end{array} \right.$

G. P. of _____, in the county of _____, officer to the Sheriff of _____, maketh oath and saith, that under and by virtue of a writ of fieri facias directed to the said Sheriff, commanding him that he should cause to be levied of the goods, chattels, &c. &c. (d) of the above-named defendant, a certain debt of £ _____, which the above-named plaintiff recovered against the said defendant in this Court, returnable immediately after an execution thereof, and indorsed to levy the whole, besides legal charges, and also of a warrant of the said Sheriff granted on the said writ, he this deponent did, on the _____ day of _____ instant, seize certain goods, chattels, &c. then being in the dwelling-house of the said defendant, situate at M., within the bailiwick of the said Sheriff, and that the said goods, chattels, &c. now are in the possession of the said Sheriff. And this deponent further saith, that on or about the _____ day of _____ instant, he, this deponent, was served with a written notice, of which the following is a true copy, [*copy the notice verbatim*]. And this deponent further saith, that he has made all possible inquiry into and about the validity of the said claim, and is not able to determine to whom the said goods or chattels

(v) *Scott v. Lewis*, 2 C. M. & R. 290.

(x) *Isaac v. Spilsbury*, 10 Bing. 3; 3 M. & Sc. 341; *Bentley v. Hook*, 2 Dowl. 339; 2 C. & M. 436; *ante*, p. 347; *Tidd's New Pr.* 577.

(y) *Cook v. Allen*, 2 Dowl. 11.

(z) *Donniger v. Hinzman*, 2 Dowl.

424; *Dobbins v. Green*, 2 Dowl. 510; *Bond v. Woodhall*, 4 Dowl. 351.

(a) *Levy v. Champneys*, 2 Dowl. 454.

(b) *Angus v. Wootton*, 3 Mee. & Wels. 310.

(c) *Powell v. Lock*, 3 Ad. & E. 315; 4 Nev. & M. 852.

(d) Examine the words of the *f. fa.*

belong; and he further saith, that the above-named plaintiff insists upon the same being sold by the said Sheriff (e).
Sworn, &c.

G. P.

No one has a right to be heard against the rule unless he is called upon by the rule, though he is in fact a claimant, and if he is called in one character he cannot appear in another (f). The claimants may appear without taking office copies of the affidavits on which the rule was obtained (g). Affidavits on showing cause may be sworn at any time before cause is shown (h). The nature and particulars of a party's claim, except that of an execution creditor (i), cannot be taken on statement by counsel, but must be by affidavit (k). And when a new claim is raised after a *rule nisi* has been obtained, the Sheriff may make the new claimant a party to the rule, and the Court will enlarge the rule until the other claimant consents (l).

Appearance of parties.

Who can appear. Affidavit, when sworn. Statement of counsel instead of affidavit. New claimant after rule nisi.

The Court either discharges the rule, in which case the Sheriff is entitled to a *reasonable* time to return the writs before an attachment can issue; in the case cited the rule was discharged on the 7th of May, and on the 9th of May the attachment issued, but was set aside for the reason above assigned (m); or the Court directs one or more *feigned issues* to be tried, in which case who is to be plaintiff and who defendant on the record, and what admissions (n) are to be made by the defendant, are in the discretion and ordering of the Court as may best suit the justice of the case; in general the claimant should be the plaintiff and the execution creditor the defendant. In a recent case the execution creditor was plaintiff (o).

Rule discharged,

Or feigned issue directed. Parties to action in feigned issue.

It was once considered (p) that the power of the Court to bar claims extended only to *third* persons and not to an *execution creditor*, but an execution creditor's claim may now be barred by the Court as well as that of an adverse claimant (q).

What claims barred by the Court.

(e) *Ante*, p. 349.

(f) *Clarke v. Lord*, 2 Dowl. 55.

(g) *Mason v. Redshaw*, 2 Dowl. 595.

(h) *Braine v. Hunt*, 2 Dowl. 391.

(i) *Ante*, p. 352.

(k) *Powell v. Lock*, 3 Ad. & E. 315.

(l) *Kirk v. Clark*, 4 Dowl. 363.

(m) *Rex v. Sheriff of Hertfordshire*, 5 Dowl. 144; 2 Har. & Wol. 122.

(n) *Bramidge v. Adshead*, 2 Dowl. 59.

(o) *Bramidge v. Adshead*, *suprà*; *Bartley v. Hook*, 4 Tyr. 229; *Curlew v. Pocock*, 5 Dowl. 381.

(p) *Donniger v. Hinzman*, 2 Dowl. 428.

(q) *Ford v. Dilly*, 5 B. & Ad. 885; *Perkins v. Benton*, *ibid.* n; *Eveleigh v. Salisbury*, 3 Bing. N. C. 298.

Appearance and non-appearance of parties to the rule.

In case the Sheriff and the judgment creditor appear, the former to support his rule, the latter to resist the adverse claim, and *the adverse claimant* does not appear, the Sheriff's rule is made absolute, and the adverse claimant is barred as against the Sheriff(r).

Summary settlement how obtained.

Without the consent of both the plaintiff and the claimant, the Court has no power to dispose of the case *summarily* (s). In the case cited, the summary jurisdiction was objected to by the execution creditor, and an issue was then directed to try the matter in dispute, the execution creditor being made plaintiff.

Costs.

Where execution creditor fails to appear.

Adverse claimant fails to appear.

" *The costs of all such proceedings shall be in the discretion of the Court* (t). In the exercise of that discretion, the Courts have laid it down as a general rule, that if the execution creditor does not appear, he must pay the adverse claimant's costs (u); if the adverse claimant does not appear he must pay the execution creditor's costs (x); and that as regards the Sheriff he is not in general allowed costs; the reason assigned is, that he is not bound to come to the Court, and if he prefers so doing to taking an indemnity, that is no reason why he should have costs; again, it is considered that the statute is in itself sufficiently beneficial to Sheriffs (y). A better reason may possibly be drawn by analogy to the practice on applying to the Court to enlarge the time for making his return, when no costs are allowed him. But if both the execution creditor and the claimant fail to appear, the Court will order the Sheriff to sell so much of the goods as will defray his poundage and expenses of sale, and to abandon the remainder, and will protect him from all actions in respect thereof (z). *Where all parties* to the rule appear, and no blame appears to attach either to the execution creditor, the claimant, or the Sheriff, each party will have to pay his own *costs* attending the application (a).

Where execution creditor and claimant both fail to appear.

Where all parties appear.

(r) *Bowdler v. Smith*, 1 Dowl. 418.

(s) *Curlewis v. Pocock*, 5 Dowl. 381.

(t) Sect. 6.

(u) *Beauwick v. Thomas*, 5 Dowl. 458; *Tomlinson v. Done*, 1 Har. & Wol. 123.

(x) *Bowdler v. Smith*, 1 Dowl. 418; *Burton v. Skey*, *ibid.* 428; *Perkins v. Benton*, 3 Tyrw. 51; *Towgood v. Morgan*, *ibid.* n.

(y) *Ibid.*; also *West v. Rotherham*,

2 Bing. N. R. 527; 2 Scott, 802; *Oram v. Sheldon*, 1 Scott, 697; 1 Hodges, 92; *Bryant v. Ikey*, 1 Dowl. 430.

(z) *Eveleigh v. Salisbury*, 5 Dowl. 369.

(a) *Morland v. Chitty*, 1 Dowl. 520; *Clarke v. Lord*, 2 Dowl. 55; *Oram v. Sheldon*, 1 Scott, 697; 1 Hodges, 92.

Again, as the Sheriff is not entitled to receive, so he is not in general liable to pay costs, if he acts fairly (*b*). But where he does not act fairly, or is guilty of any laches in making his application as to time, or giving notices (*c*), or if he makes no inquiry into the nature of the claim set up (*d*), or does not pay the landlord his rent after proper notice (*e*), the Court will make the Sheriff pay the costs of the application, and likewise the costs of any security ordered to be given. On the other hand, where a claim is made by one on behalf of another to goods seized by the Sheriff in execution, and neither party appears to show cause, or either of them appears, and the claim does not appear a *bond fide* claim, both the Sheriff and the plaintiff are entitled to their costs from the claimant or his agent (*f*). Again, where the adverse claimant or execution creditor, after a rule absolute is made, on the first application appears and opens the rule, the Court will grant the Sheriff his costs of his second appearance (*g*).

When Sheriff pays.

When he receives costs.

Such expenses as he may incur as *agent* of the parties after his application, will be allowed (*h*), and any *extra* expenses he may have been put to by obeying the rule of Court directing an issue (*i*). But costs incurred by keeping possession in consequence of a party refusing to consent to a judge at chambers making an order in the case, no authority for that purpose being given by the statute, are not allowed the Sheriff (*k*).

When the Sheriff is agent of the parties.

In case the Court directs an issue, the costs fall on the party who fails (*l*); and the Court may adjudicate as to the costs of appearing to the Sheriff's rule, and of an issue directed to be tried under it, although the trial of it has *already* taken place; if it had not such a power, the act would be useless (*m*). When an issue is directed to be tried between an execution creditor and a claimant, and the latter refuses to try and abandons his

Costs on feigned issue.

(*b*) *Clarke v. Lord*, *suprà*.

(*c*) *Bland v. Delano*, 6 Dowl. 293; *Almore v. Adeane*, 3 Dowl. 598; *Beale v. Overton*, 5 Dowl. 599; *Braine v. Hunt*, 2 Cr. & M. 418; 4 Tyr. 243.

(*d*) *Bishop v. Hinzman*, 2 Dowl. 166; *Sheriff of Oxfordshire*, 6 Dowl. 136.

(*e*) *Clark v. Lord*, *suprà*.

(*f*) *Philby v. Ikey*, 2 Dowl. 222; *Lewis v. Eicke*, *ibid.* 337.

(*g*) *Bryant v. Ikey*, 1 Dowl. 428.

(*h*) *Dabbs v. Humphries*, 1 Scott, 325; 1 Bing. 412; 3 Dowl. 377; *Underden v. Burgess*, 4 Dowl. 104.

(*i*) *Armitage v. Foster*, 1 Har. & Wol. 208.

(*k*) *Clarke v. Chetwode*, 4 Dowl. 635.

(*l*) *Bowen v. Bramidge*, 2 Dowl. 214.

(*m*) *Seaward v. Williams*, 1 Dowl. 528.

claim, he will be liable to pay the execution creditor's costs down to the time of the claim being abandoned *and* of applying to take the money paid in by the Sheriff out of Court (n); and where the Court ordered a claimant to proceed to trial upon bringing a sum of money into Court, which he neglected to do, held, that he was liable to pay as well the costs occasioned by his false claim as the costs of the application to Court to compel him to pay them, and that too although no previous application had been made to him (o); but the costs should be previously demanded, otherwise the costs of the application will not in general be allowed (p). The Sheriff will be allowed the extra expenses he is put to by obeying the rule of Court directing an issue (q); and the expenses of a sale effected by the authority of the Court, although it appears on the trial of the issue, that the seizure was wrongful (r).

All orders,
&c. entered
of record.

"All rules, orders, matters and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered, shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements or hereditaments; and in case any costs shall not be paid *within fifteen days after notice of the taxation, and the amount thereof* given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *feri facias* or *capias ad satisfaciendum adapted to the case*, together with the costs of such entry and of the execution, if by *feri facias*; and such writ or writs may bear *teste* on the day of issuing the same, whether in term or vacation, and the Sheriff or other officer executing any such writ shall be entitled to the same fees and no more as upon any similar writ grounded upon a judgment of the Court."

(n) *Wills v. Hopkins*, 3 Dowl. 346.

(o) *Scales v. Sarginson*, 3 Dowl. 707.

(p) *Ibid.*

(q) *Armitage v. Foster*, 1 Har. & W. 208.

(r) *Bland v. Delano*, 6 Dowl. 293.

Fieri Facias for Costs.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of the Faith, to the Sheriff (*s*) of , greeting: We command you that you cause to be levied of the goods, chattels, &c. (*t*) in your bailiwick of *C. D.* the sum of £ , being the amount of taxed costs of a certain application made by the Sheriff of *W.* to our Court before us, [*or in C. P.* "before our justices," *or in Exchequer*, "before the barons of our Exchequer,"] at Westminster, and which the said Court adjudged to *A. B.* to be paid by the said *C. D.*, and whereof the said *C. D.* is convicted, pursuant to the statute in such case made and provided, as appears to us of record, and have that money before us, [*or in C. P.* "before our justices," *or in Exchequer*, "before the barons of our Exchequer,"] at Westminster, on the day of next, to be rendered to the said *A. B.* for his costs and charges aforesaid, and have there then this writ. Witness, &c. *Denman.*

Capias for Costs.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of the faith, to the Sheriff of *W.*, greeting: We command you that you take *C. D.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, [*or in C. P.* "before our justices," *or in Exch.* "before the barons of our Exchequer,"] at Westminster, immediately after the execution hereof, or on next, to satisfy *A. B.* the sum of £ , being the amount, &c. *ut supra.* Witness, &c. (*u*).

(*s*) In case the Sheriff is to pay costs, it must be directed to the coroner.

(*t*) *Ante*, p. 321.

(*u*) As the mode of executing these

writs, returns, &c. are the same as those already mentioned under the titles of *fi. fa* and *ca. sa.*, it is needless to do more here than merely refer to them; *ante*, 321. 316.

CHAPTER V.

ACTIONS AGAINST HIGH SHERIFF.

SECT. I.

GENERAL OBSERVATIONS.

Liability of High Sheriff for his Under-sheriff, bailiffs, &c. Respondent superior does not apply to some public officers, but to Sheriff it does.

THE maxim of *respondent superior* approaches nearly to universal truth, as applicable to the persons now under consideration. It is true that constructive negligence or misconduct arising from the acts of an agent has been holden not to attach upon some public officers (*a*), such as the postmaster-general (*b*), commissioners of the customs and excise, auditors of the exchequer, (a distinction in favour of those and some other public officers of ancient date,) yet, as will appear, the exception never did nor does include High-sheriff; but that for all civil purposes, wherein he acts *ministerially* (not *judicially*), the law looks upon him and his officers as *one* person (*c*), and for whose acts he is responsible to the world.

Civiliter, but not *criminaliter* liable, meaning of the terms.

It becomes then material to inquire *how* he is made responsible, and *to what degree* such his responsibility extends. In answer to the first question the language of Buller, J., in the case of *Woodgate v. Knatchbull* (*d*) is very forcible and clear. "This (says he) depends on the true meaning of an expression in the books that the Sheriff is answerable *civiliter*, but not *criminaliter*, for the acts of his bailiffs. So long ago as the case in *Latchford* the line was drawn with so much precision that it does not admit of any doubt. There it is explained to mean that the Sheriff shall not be imprisoned or indicted for the acts of his bailiff, but that an action lies against him by the party grieved

(a) Per Holt, C. J. 2 Salk. 240; 4 Term Rep. 66; *ante*, p. 45.

(b) *Lane v. Cotton*, 1 Ld. Raym. 606; *Whitfield v. Lord Despencer*, Cowp. 754, 766.

(c) *Woodgate v. Knatchbull*, 2

Term Rep. 150; *Cameron v. Reynolds*, Cowp. 403; *Sanderson v. Baker*, 3 Wils. 317; 2 Esp. 507; Dr. & St. 280; Roll. Abr. 92, pl. 2; *Crowder v. Long*, 8 B. & Cr. 602; *ante*, p. 45.

(d) 2 Term Rep. 150.

for damages, and he shall be fined, so that he is not liable to any corporal punishment; but when it rests in damages, he shall make the party a pecuniary satisfaction." Thus much as to the nature of the proceedings against him for the misconduct of his officer.

Next, as to the extent of his liability: in order to define the same, the law of master and servant (the principles now under discussion being derived from that source) should properly be well considered and compared; but it is considered better simply to state in general terms that his liability is not confined to mere acts of negligence, (the utmost extent of a master's liability for the acts of his servant)(*e*), but extends to *wilful* acts, and even to such as would warrant a criminal prosecution, such as extortion and the like (*f*). Whether this difference in degree flows from the nature of the duties he has to discharge to the world, or from the security he takes or is supposed to take from his officers, which is not done in other cases—from one or both, seems unnecessary to determine; the latter, however, is more generally assigned by the Courts as the reason; such is the extent of his liability.

Extent of liability.

As a general rule of pleading, all actions for a breach of duty *must* be brought against the High Sheriff, whether it be for the default, extortion, or other misconduct, wilful or negligent, of the officer (*g*).

Action in general must be against High Sheriff.

There are, however, be it observed, some instances of misfeasance and malfeasance, for which the officer himself *may* be made defendant, as by the statutes against extortion, in like manner for a *voluntary* escape, or any act of trespass in executing process, for the officer thereby becomes an actual personal wrongdoer (*h*).

Again, to charge the High Sheriff at all, two things must concur—1st, he must be acting in a *ministerial* and not in a *judicial* (*i*) character; and 2dly, his officer must be acting under his

But he must be acting in a ministerial capacity.

(*e*) *M'Manus v. Crickett*, 1 East, 106; *Crofts v. Alison*, 4 B. & A. 590.

(*f*) 2 Term Rep. 151, 712; 7 *id.* 267; 11 East, 25; 8 B. & Cr. 602; *Smart v. Hutton*, 2 Nev. & M. 426; 1 Ch. Pl. 82, 6th edit.

(*g*) *Cameron v. Reynolds*, Cowp. 403; and cases cited, *ante*, p. 358.

(*h*) 1 Mod. 209; 12 Mod. 488; 1 Salk. 18.

(*i*) *Metcalfe v. Hodgson*, Hut. 120.

And the officer must be acting under his authority, express or implied. Acts not within the scope of bailiffs duty, but subsequently assented to.

authority, express or implied; an instance of the former proposition is reported in the case of *Tinsley v. Nassau* (*k*), when it was holden that he was not liable for the act of the bailiff in executing a warrant issued by him in his *judicial* character of judge in the County Court (*l*). The latter proposition too requires some instance or explanation, and herein of the acts of the officer not within the line of his duty, *but subsequently assented to or adopted by the Sheriff in his return* or otherwise. In the case of *Underhill v. Wilson* (*m*) the plaintiff's goods, farming stock, &c. having been seized under an execution at the suit of one *P.*, the parties, with the assent of the officer, agreed that the latter should remain in possession for a certain period, and that the farm should in the mean time be managed by the plaintiff; and the Sheriff in his return took credit for the money laid out upon the farm; and an action was brought in his name by the Under-sheriff, wherein a sum of money was recovered upon a contract entered into by the officer with an incoming tenant for the sale of hay, &c., the receipt of which sum was admitted in a letter written by the Under-sheriff to the plaintiff's attorney: held, that this was sufficient evidence of an assenting by the Sheriff to the acts of his officer; and consequently that he and not the officer was liable to the plaintiff for the surplus proceeds of the goods, after satisfying the levy and expenses. In *Crowder v. Long* (*n*) *D. (the officer)* withdrew without the knowledge of the Sheriffs, but with the full knowledge and assent of the defendant: the Sheriffs were compelled in consequence of that misconduct of the officer so authorized by the defendant to pay to a third person the value of those very goods which they had already paid to the defendant. Lord Tenterden says, "It is quite clear that the Sheriffs are entitled to recover the money so paid to the defendant, unless at the time when such payment was made they were acquainted with the fact of the misconduct of their officer. I think that as between these parties the act of the officer is not to be considered the act of the Sheriff, so as to make the latter *by implication* parties to the misconduct of the officer; but that it was incumbent on the defendant to show that the Sheriffs had *actual knowledge at the time when they made that payment.*" The legal inference deducible from this case is,

(*k*) *M. & M.* 52; 2 *Car. & P.* 582.

(*l*) *Ante*, 67.

(*m*) 4 *M. & P.* 568; 6 *Bing.* 697.

(*n*) 8 *B. & Cr.* 602; 3 *M. & R.* 17.

that the knowledge of the officer is not *necessarily* the knowledge of the High Sheriff, and that the jury (whose province it is to determine the fact) will not, where the officer deviates from his line of duty *at the instance of a third party*, as between the Sheriff and such third party, conclude the former, without proof of *actual knowledge* of the officer's misconduct: as between him and others not parties to the laches of the officer, the knowledge of the one seems *necessarily* the knowledge of the other, without proof of actual knowledge of the officer's misconduct (o). Thus much as to acts not within the line of the officer's duty, but subsequently assented to or adopted by the Sheriff. The evidence necessary to connect the Sheriff with his officer in matters within the scope of his authority, and what amounts in such cases to a recognition by him as his officer, will hereafter be fully considered.

With regard to a special bailiff, it has already been observed that no act of his will affect the High Sheriff, and simply because he is the servant of the plaintiff and not that of the High Sheriff (p); but note, if A., as the special bailiff of B. arrest C., the instant the arrest is made A.'s special character is at an end, and he is then, in contemplation of law, the bailiff or servant of him in whose custody C. is, namely, of the High Sheriff.

Liability for acts of special bailiffs.

It has been already stated likewise as to bailiffs of liberties, that they are not the Sheriff's officers, consequently no liability attaches upon him for any thing done by them upon his mandate (q).

Bailiffs of liberties.

No notice of action for any thing done by him in executing the process of the Court is required: "for by the law of England bringing an action is sufficient demand and notice, and whenever the contrary is the case, it is and must be matter of legislative enactment" (r).

Notice of action.

It is next proposed to consider the different causes of action against him under their specific heads.

(o) *Ante*, p. 45.

(p) *Ante*, p. 46.

(q) *Noy*, 27; 3 *Wils.* 309; *Ackworth v. Kemp*, 1 *Dougl.* 42; *Booth-*

man v. Surrey, Earl of, 2 *Term Rep.* 5; *B. N. P.* 69; *ante*, p. 48.

(r) 1 *Bing.* 373; 8 *Moore*, 400. *Park.*

SECTION II.

ESCAPE.

When
action will
lie for
escape.

An action will lie against the High-Sheriff for an escape on mesne process, final process, outlawry (*a*), or attachment, whether issuing out of a Court of law or equity (*b*).

Custody
must be
lawful.

Before entering upon the consideration of what amounts to an escape it must be premised that an escape necessarily implies an antecedent state of *lawful* custody (*c*); in *Rogers v. Jones* (*d*) the affidavit of debt was made before a deputy not duly appointed: Lord *Tenterden* says, "the arrest was not good, and as the party was never in lawful custody no action for the escape can be maintained against the Sheriff." In *Brazier v. Jones* (*e*) *Bayley* says, "in an action for an escape the plaintiff must aver and show in evidence not only the escape of the prisoner but that he was previously lawfully detained" (*if specially traversed*).

And in *Viner's Abridgment* it is said, "an escape cannot be on a *tortious arrest*, as where the arrest is in a wrong county" (*f*).

Sometimes, however, a *doubt may* be raised when a man is in a state of *legal* custody, thus, if an arrest takes place in a *liberty*; as the arrest, however, in such a case is legal, as against all the world but the bailiff of that liberty, an escape in law would be the consequence, if the party arrested were set at liberty by the Sheriff (*g*).

So if a prisoner is taken upon an *erroneous judgment*, in this case likewise he is in a state of lawful custody; but if taken on a *void judgment*, it is otherwise; and consequently in the latter case there could be no escape in law, in the former there could (*h*). Note, where a Court in which judgment is obtained has cognizance of the same, the judgment is only *erroneous*; but if the Court has no jurisdiction, it is *void* (*i*).

(*a*) *Bonner and Stokeley's case*, Cro. Eliz. 652; *Cook v. Champneys*, Fitz. 265.

(*b*) *Lewis v. Morland*, 2 Barn. & Ad. 63; *vide* 3 Tyrw. 356.

(*c*) *Duffy v. White*, 1 Alcock & Napier, 1.

(*d*) 7 B. & Cr. 86.

(*e*) 8 B. & Cr. 130.

(*f*) *Vin. Abr. Esc. A.*; see also

Cro. Eliz. 877; 11 Mod. 50; Hob. 202.

(*g*) *Piggott v. Wilkes*, 3 B. & A. 502.

(*h*) *Gold v. Strode*, Carth. 148; *Burton v. Eyre*, Cro. Jac. 289; *Shirley v. Wright*, Salk. 700; *Bush's case*, Cro. Eliz. 188; *Martyn v. Hendeyc*, Sty. 232; Bull. N. P. 65.

(*i*) *Ibid*.

So if *A.* being already in custody at the suit of *B.* and a writ be delivered to the Sheriff at the suit of *D.*, by the delivery (*k*) of the writ *A.* is placed in a state of legal custody at *D.*'s suit, and an escape in law would follow if released, and *D.* might have his action against the Sheriff; in like manner as if the delivery of the writ had preceded in point of time *A.*'s arrest at *B.*'s suit (*l*).

And *Morgan v. Bridges* (*m*) seems to have proceeded mainly upon the same principle; in that case the Sheriff having a writ against *G. B.* arrested *M. B.* who was the real debtor, and at the time of contracting the debt had represented himself as *G. B.*: held, that the Sheriff having been informed of these circumstances while he had the real debtor in his custody was not bound to detain him, and therefore that an action would not lie against him for an escape.

Therefore this proposition of law may be safely laid down, *that an escape must be preceded by a state of lawful custody.*

An escape may be either *voluntary* or *negligent*, that is, with or without the consent of the Sheriff or his officer; it may be on *mesne* or *final* process, and in *criminal* or *civil* cases. From the consideration of these several heads of the subject, it will appear amongst other things what amounts to an escape in law.

Kinds of
escape.

In arrest upon mesne process all that is required of the Sheriff is to bring the body of the defendant into Court on the day limited for the defendant's appearance (*n*), consequently the Sheriff or his officer may, if he will, discharge the defendant without taking a bail bond or any other security for his appearance; and if he afterwards retake him before the time limited for his appearance, or if (which is deemed tantamount) after returning *cepi corpus*, and before (*o*) the expiration of the rule to bring in the body, he put in and perfect bail or render the defendant, there is no escape. But if the Sheriff has not the defendant in actual custody at the time limited for his appearance, nor puts in and perfects bail, nor renders the defendant in due time, that is, before the expiration of the rule to bring in the body, there

Escape on
mesne pro-
cess.

(*k*) *Frost's case*, 5 Co. 89; 1 Salk. 274.

(*l*) *Benton v. Sutton*, 1 Bos. & Pull. 24.

(*m*) 1 B. & Ald. 647.

(*n*) 1 Saund. 35 a.

(*o*) *Pariente v. Plumbtree*, 2 Bos. & Pull. 35.

Effect of perfecting bail *after* action brought.

is an escape, for which he will be answerable (*p*); whether the putting in and perfecting bail *after* action brought, and before trial, would be a bar to such action is still an open question; it seems that it would be so, and that the only means the plaintiff has of preventing this is by opposing the justification or moving to set aside the rule of allowance (*q*). The Court will not in general allow the Sheriff to render the defendant after action properly brought against the Sheriff for an escape.

If a bond has been taken. Parties to the action.

If a proper bail bond has been taken no action lies (r).

The plaintiff in the original action is the proper party to sue for an escape: the superior and not inferior should be defendant, except it be on a voluntary escape, when the inferior officer *may* be made defendant.

When there are two Sheriffs and one dies.

When there are two Sheriffs who suffer an escape and one dies the action lies against the survivor; or if pending the action one dies, the action survives (*s*).

Old Sheriff liable for omission in transfer list.

If the old Sheriff, at the expiration of his office, omit to turn over and transfer (*t*) a prisoner to the care and custody of the new Sheriff, *he* (the old Sheriff) is liable for an escape (*u*).

Liability of Under-sheriff in case of the death of High Sheriff.

By 3 Geo. 1, c. 15, s. 8, in case of the death of the Sheriff the under-sheriff is liable for escape after that time.

Heir and executor. Escape when there are two writs.

Neither the heir nor executor of the Sheriff is liable; whether an executor can sue for an escape in his testator's lifetime seems undecided, Mr. Chitty thinks he might do so (*x*).

If, while the defendant be in custody of the Sheriff in an action at the suit of *A.*, a writ be lodged in the office of the Sheriff at the suit of *B.*, and the defendant escape, *A.* or *B.* may sue for the escape (*y*).

Form of remedy.

For an escape on *mesne* process an action on the *case* is the only form of remedy against the Sheriff (*z*). This indeed at common law was the only remedy on *final* process, until the

(*p*) 2 Saund. 61 b; 1 Archb. Pr. 147, and cases cited.

(*q*) *Murray v. Durand*, 1 Esp. 87; *Allingham v. Flower*, 2 Bos. & Pull. 246; *Morley v. Cole*, 1 Price Rep. 123; *Fairlie v. Birch*, 3 Camp. 397; *à contrà Fuller v. Prest*, 7 T. R. 109; *Moses v. Norris*, 4 M. & S. 397; 1 Taunt. 119.

(*r*) *Mender v. Bridges*, 5 Taunt. 325.

(*s*) Cro. Eliz. 625; *ante*, p. 6.

(*t*) *Ante*, p. 28.

(*u*) 3 Rep. 71 b.

(*z*) 1 Ch. Pl. 69.

(*y*) *Barton v. Sutton*, 1 Bos. & Pull. 24.

(*x*) 1 Saund. 37, 38, n. 2; 2 Inst. 382.

statutes of Westminster 2 (13 Edw. 1, c. 11), and 1 Rich. 2, c. 12, gave the cumulative or additional one of debt for escapes on final process (a).

As this action will now, in consequence of the new imprisonment for debt bill, be of such rare occurrence in practice, it would be to little or no purpose to give the pleadings—the form of declaration or the like, indeed to set down more than general observations thereon, leaving the rest to books of precedents.

Action of rare occurrence, why.

In his declaration the plaintiff must allege that he had a cause of action against the defendant in the original action (b), (the subject-matter of the debt and a promise to pay it is averred in the older precedents;) but in the modern forms it is alleged generally to be “for the sum of £— upon and in respect of certain causes of actions before then accruing to the plaintiff against the said *E. F.* ;” and this general allegation is not only sufficient (c) but advisable, for if the nature of the original cause of action be misstated, as if it were stated to be for goods sold *generally*, and it appeared in evidence to be for goods sold *on credit*, the variance would be fatal (d). When the party proceeds in an inferior Court it should be stated that the debt accrued within the jurisdiction, though the omission would it seems be aided after verdict (e); then is stated the *capias*, the indorsement for bail, the delivery to the Sheriffs, and arrest; these must agree with the facts: a *material* variance would be fatal, to use the words of Lord Ellenborough, “the writ must speak for itself; I cannot hear that instead of *A. B.* mentioned in the writ, it was meant that the Sheriff should arrest *X. Y.* (f).” But when the variance is immaterial it is of no moment, as where in an action for an escape, the plaintiff declared on a writ of the *king*, and the writ produced in evidence was a writ of George the *Third*, but tested in the name of Best, C. J., and indorsed with the date of 1826, being in the reign of George the *Fourth* (g). So when the writ produced was indorsed “£24 and upwards, besides, &c.” the declaration stating the writ to have been in-

Substance of declaration.

Variances.

(a) Cro. Jac. 288.

(b) 2 Lev. 85; 4 Term Rep. 611; 2 Saund. 160.

(c) Co. Dig. Pl. 2. P. 1, E. 18; 8 Term Rep. 127.

(d) 2 Esp. 476; 5 Esp. 102.

(e) 2 Saund. 109, n. 2; *Bentley v.*

Donnelly, 8 Term Rep. 127; *Read v. Pope*, 1 Cr. M. & R. 302; 4 Tyrw. 403.

(f) *Scandover v. Warne*, 2 Camp. 270; *Wilks v. Lock*, 2 Taunt. 399.

(g) 4 Bing. 278.

dorsed for £24, it was deemed no variance (*h*). But it is superfluous to accumulate authority upon authority on this point, as it is quite clear that the judges have the same power of amendment in this case as in others, when the evidence and the record are at variance. In the breach it is stated, that he (the Sheriff) "on, &c. without the leave or licence, and against the will of the plaintiff, *voluntarily* suffered and permitted the said *E. F.* to escape and go at large wheresoever he would out of the custody of the now defendant." The allegation is of a *voluntary* escape, but under it a *negligent* escape may be given in evidence, and so vice versa (*i*).

If it be a voluntary escape the party escaping may be called to prove it (*k*).

Different counts.

It is usual, ever since the Rules of Hil. 4 Will. 4, and advisable to insert three counts in the declaration: 1st, for an escape; 2nd, for not arresting the defendant when there was an opportunity; 3rd, for not assigning the bail bond on request (*l*).

Pleas.

The Sheriff may plead the general plea of *not guilty*, which "operates as a denial of the neglect or default of the Sheriff or his officers, but not of the debt, judgment or preliminary proceedings," which if intended to be put in issue must be pleaded in denial (*m*).

What may be given in evidence under the general plea.

Pleas in denial, confession and avoidance.

Under the *general plea* then, since the above rule, the Sheriff (in order to show that there is no neglect or default of himself or officer) can only show that he has not, in point of *fact*, allowed the prisoner to go at large, and that all other matters of defence must be pleaded specially *by way of denial, or confession and avoidance*. That a proper bail bond was taken (*n*); or that although no bail bond was in fact taken, yet that bail was put in and perfected; or that the party rendered himself before the time for bringing in the body had expired (*o*); that the debtor was never

(*h*) *Williams v. Sheriff of Middlesex*, at Guildhall, A. D. 1817, 25th July, before Abbott, J., cited in 2 Ch. Pl. p. 293. See also *Cousins v. Brown*, M. & M. 291.

(*i*) 1 Saund. 35, n. 1; 2 Term Rep. 126; 1 Vent. 217; 3 Keb. 55.

(*k*) Bull. N. P. 67; 4 B. & Ald. 210.

(*l*) See the necessity of this last count by the decision in *Mendes v. Bridges*, 5 Taunt. 325; *sed vide* *Neck v. Humphrey*, 3 Ad. & E. 130.

(*m*) Hil. T. 4 Will. 4; *Dukes v. Gostling*, 1 Bing. N. C. 588; *Frankum v. Falmouth*, 2 Ad. & E. 456; 4 Nev. & M. 333; *Wright v. Lainson*, 2 M. & W. 739; *Lewis v. Alcock*, 3 M. & W. 188.

(*n*) *Mendes v. Bridges*, 5 Taunt. 325; *Postern v. Hanson*, 2 Saund. 61; *Ellis v. Yarborough*, 1 Mod. 227; *Barton v. Aldeworth*, Cro. E. 624.

(*o*) *Pariente v. Plumtree*, 2 Bos. & Pul. 35.

in a state of *legal* custody (*p*) ; or in his custody at all, as if the arrest was by a bailiff of a liberty on a mandate from the Sheriff, in which case the bailiff alone is liable (*q*) ; or a rescue (*r*) ; (but if the rescue has taken place after the party has been within the walls of the prison, it will be no defence (*s*) at all except it be by the Queen's enemies,) re-capture and voluntary return (*t*) ; so if the escape takes place in consequence of the prison taking fire, the defence must be specially pleaded. In a word, any matter which in point of *law* justifies the debtor's being at large after the arrest, must be specially pleaded in one way or the other.

" The expression '*wrongful* act alleged to have been committed by the defendant' (*u*), has given rise," says Mr. Roscoe, " to much discussion and considerable doubt, but it now appears that the word *wrongful* was made use of by the framers of the rule as descriptive of the *act* of which the plaintiff complains, and not as describing the *quality* of the matter intended to be put in issue. The rule is to be understood as declaring that '*not guilty*' shall put in issue the act which the plaintiff affirms to be wrongful, and not as declaring that it shall put in issue '*the act and the wrong* arising therefrom.' "

The plaintiff can recover in this action only such damages as he can prove he has *actually* sustained and a jury thinks fit to give him ; if the whole is lost, the jury will give the plaintiff damages to that extent, together with what he has lost in costs, but small damages are often given on the ground that the debt is not extinguished, and that the whole amount may afterwards be recovered, notwithstanding the recovery against the Sheriff(*x*) ; but if the plaintiff prove his case he will, at all events, be entitled to *nominal* damages (*y*).

The evidence necessarily depends upon the issues raised on the record, and therefore general observations only can be made thereon ; but assuming that the cause of action in the original

Evidence if original cause of action be denied.

(*p*) *Morgans v. Bridges*, 1 B. & A. 647 ; *Rogers v. Jones*, 7 B. & Cr. 86 ; and cases cited, *ante*, 364.

(*q*) B. N. P. 69 ; 3 Wils. 309 ; Noy, 27.

(*r*) *May v. Proby*, Cro. Jac. 419.

(*s*) B. N. P. 68 ; *Aisepth v. Eyles*, 2 H. Bl. 113.

(*t*) 8 & 9. Will. 3, c. 27, s. 6.

(*u*) Pl. Hil. T. 4 Will. 4.

(*x*) *Scott v. Henley*, 1 M. & R. 227 ; see also *Morris v. Robinson*, 3 B. & Cr. 206.

(*y*) 2 Bing. 317.

suit is put in issue, the plaintiff must establish in evidence that there was a debt due (*z*) to him from the party arrested at the time of the arrest (*a*); and if the cause of action be alleged in the declaration, a variance would be fatal (*b*), but the amount is not material (*c*). As a general rule, any evidence which would be admissible against the defendant in the original action will be evidence against the Sheriff (*d*), and therefore an admission of the debt by the debtor at any time before the *arrest* is good evidence against the Sheriff. Bayley, J. says, "it would be evidence if made before the escape," and after the arrest (*e*).

Evidence if writ be denied.

If the issuing and delivery of the writ to the defendant be denied, (if the process has been returned and filed,) an examined copy of the writ and return will be evidence of these facts (*f*); (if not returned) secondary evidence will be admissible after proof of notice to produce the original—of due search having been made at the proper office, and of its having been delivered to the Sheriff or Under-sheriff, or at the Sheriff's office.

The Sheriff must be *connected* with the officer who suffered the debtor to escape; as to the mode of establishing which, and the effect of admissions, as well of a bound bailiff as of the Under-sheriff, enough for the present purpose has been already stated (*g*).

Of escape.

The facts constituting an arrest have already been noticed (*h*). The escape is proved by showing directly that the party was in the custody of the Sheriff or his officer, or else that the Sheriff returned *cepi corpus*, and that the party was at large *after* the return of the writ, and that bail has not been put in and perfected (*i*). In a recent (*k*) case, a return of *cepi corpus*, coupled with evidence of an answer received at a Sheriff's office, that no bail bond was executed, was considered evidence to go to the jury of the escape. *Note*—the return in that case was "*cepi corpus et paratum habeo*," and yet it was holden that the plaintiff was not concluded by the latter words from proving the escape by

(*z*) *Alexander v. Macauley*, 4 T. R. 611.

(*a*) *White v. Jones*, 5 Esp. 160.

(*b*) *Parker v. Fenn*, 2 Esp. 477.

(*c*) B. N. P. 66.

(*d*) *Williams v. Bridges*, 3 St. 42.

(*e*) *Rogers v. Jones*, 7 B. & Cr. 89; 5 D. & R. 484.

(*f*) B. N. P. 66; *Jones v. Wood*, 3 Camp. 397; 1 Esp. 269.

(*g*) Phill. Ev. 222; *ante*, p. 45.

(*h*) *Ante*, 310.

(*i*) *Fairley v. Birch*, 3 Camp. 397.

(*k*) *Neck v. Humphrey*, 3 Ad. & E. 130; 4 N. & M. 707; *sed vide Mendez v. Bridges*, 5 Taunt. 325.

parol evidence that the prisoner was at large after the return and no bail bond lodged with the Sheriff.

In the case of *Atkinson v. Mattison* (l) it is said, that "the only difference between an arrest on mesne process and in execution is this, in the former the bailiff may permit the prisoner to go at large provided he has him at the return of the writ, but in the latter case if the bailiff *voluntarily* permit the prisoner to go at large, though only for a minute, he cannot afterwards re-take him." Of course the legal character of an escape differs as the exigencies of the writs differ; on the former he may go at large, because his *appearance* is its object; on the latter he may not go at large for ever so short a time, either before or after the return of the writs, because *satisfaction* of the debt is its object. But it is necessary to distinguish further escapes on mesne and final process.

Escape on final process distinguished.

If any general rule can be laid down it seems to be this, that whenever the prisoner in execution is in a different custody from that which is likely to enforce payment of the debt, it is an escape (m); as if he be in company with and under the controul of a follower of the Sheriff's officer before he be taken to prison (n), (but if the prisoner be taken to a lock-up house it is no escape (o)). If he be taken out of the jurisdiction it is an escape (p); or if the Sheriff receives the sum indorsed on the writ from the prisoner, and before payment over to the plaintiff liberate him, it is an escape, for a payment to the Sheriff is no discharge of the debt as against the plaintiff (q); so if he discharges a bankrupt on production of his certificate (r).

If baron and feme be taken in execution, and the feme be suffered to escape, an action will lie, though the baron continue in prison (s); so if there be a judgment against two persons in execution and one escape, the Sheriff will be liable for the whole debt (t).

(l) 2 Term Rep. 176, Ashurst, J.

(m) 2 W. Bl. 1049.

(n) *Benton v. Sutton*, 1 Bos. & Pul. 24.

(o) *Houlditch v. Birch*, 4 Taunt. 608.

(p) 12 Mod. 116; 1 Bos. & Pul.

24; see also *Hepworth v. Sanderson*, 8 Bing. 19.

(q) *Clarkford v. Austin*, 14 East, 468; 4 B. & Cr. 31.

(r) *Sherwood v. Benson*, 4 Taunt. 631.

(s) 1 Roll. Abr. 810, (F.) pl. 5.

(t) *Ibid*.

SECTION III.

ESCAPE ON FINAL PROCESS.

Parties to
action.

What has been said before as to parties to action for an escape on mesne process, in general applies to parties suing on final process; in addition, however, it must be here stated, that the nominal plaintiff in an action for mesne profits may sue for an escape on a judgment thereon (*a*); also a hundred may sue for an escape on a judgment obtained by them (*b*); and an administrator may sue in his own personal right for an escape on a judgment obtained by him as administrator (*c*).

Form of
remedy.

For an escape on *final process* there are two forms of remedy by action, namely, the common law form in *case* (*d*), and the statutory form in *debt*; the latter of which is preferable when maintainable, as the jury cannot give a less sum than the creditor would have recovered against the prisoner, namely, the sum indorsed on the writ and the legal fees on execution (*e*); whereas in *case* he will recover such damages only as the jury may think proper to give him for the officer's misconduct (*f*); and, moreover, in *debt* the Statute of Limitations (*h*) is no defence; again, *debt* lies as well when the escape is negligent as when it is voluntary (*i*).

Declara-
tion.

In the declaration the judgment (*k*) must be alleged, and, if traversed, proved in *substance*; an immaterial variance, as the stating it to be recovered in Easter instead of Trinity, or conversely (*l*), will not prejudice, for it may be rejected as surplusage (*m*) or amended (*n*); and though judgment be revived by sci. fa., it is unnecessary to state the judgment on the sci. fa. (*o*);

(*a*) *Doe v. Jones*, 2 M. & S. 473.

(*b*) *Fitzg.* 296.

(*c*) *Bonafous v. Walker*, 2 T. R. 126.

(*d*) *Cro. Jac.* 289; 2 *Inst.* 382.

(*e*) *West.* 2; 1 *Rich.* 2, c. 12; *ante*, p. 16.

(*f*) *Alept v. Eyles*, 2 H. Bl. 113; 2 W. Bl. 1048; *Bonafous v. Walker*, 2 *Term Rep.* 129.

(*h*) *Jones v. Pope*, 1 *Sid.* 305; 1 *Saund.* 37, n. 2; 2 *Saund.* 67, n. 10.

(*i*) 2 H. B. 108; *supra*, 2 *Str.* 127.

(*k*) 1 *Saund.* 37; *Brasier v. Jones*, 8 B. & C. 128; 2 Ch. Pl. 268.

(*l*) *Bromfield v. Jones*, 4 B. & Cr. 382; *Stoddart v. Palmer*, 3 B. & Cr. 4.

(*m*) *Ibid.*

(*n*) 9 *Geo.* 4, c. 15; 3 & 4 *Will.* 4, c. 42, s. 23; *Brasier v. Jones*, 6 B. & Cr. 196; 8 *Taunt.* 515.

(*o*) 4 B. & Cr. 382, *supra*.

but a substantial variance will be fatal; thus stating the judgment of the Court of Queen's Bench to have been recovered "in the Court of the Bench," would be fatal (*p*); or to be on certain promises and undertakings, when it was only on a promise and undertaking, would, it seems, be bad (*q*). There is no occasion to refer to the record of the judgment by a *prout patet per recordum* (*r*). The issuing of the ca. sa. must also be correctly described, that is, in substance (*s*),—the indorsement to levy—delivery of writ to defendant as sheriff—caption of the original defendant.

Before the publication of the pleading rules of Hilary term, 4 Will. 4, the whole declaration was put in issue by the plea of "*nil debet*," and under it any defence was admissible, except a recaption or a voluntary return into custody. But by them, under the head "*Covenant and Debt*," it is declared that—

General
plea.

2. The plea of "*nil debet*" shall not be allowed in any action.

3. In actions of debt on simple contract, other than on bills of exchange and promissory notes, the defendant may plead that "he never was indebted in manner and form as in the declaration alleged," and such plea shall have the same operation as the plea of non assumpsit in indebitatus assumpsit, and all matters in confession and avoidance shall be pleaded specially, as above directed, in actions of assumpsit.

4. In other actions of debt, in which the plea of "*nil debet*" has been hitherto allowed, including those on bills of exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the declaration, or plead specially in confession and avoidance."

In the case of *Faulkner v. Chevell* (*t*), *Littledale, J.* thought that the joining of covenant and debt under one head showed that those actions of debt only were contemplated by the rules which have some kind of contract for their foundation, and it was intimated that the plea of not guilty (or *nil debet*) was still a good plea to a declaration on a penal statute. The plea of "*nil debet*," as tested by this rule, would appear to be a good

(*p*) 7 Taunt. 271.

(*q*) 5 B. & Cr. 339; 8 D. & R. 98, S. C.

(*r*) 3 B. & Cr. 4, *supra*.

(*s*) *Phillips v. Bacon*, 9 East, 298.

(*t*) 5 Ad. & E. 213.

plea; however there seems little ground for contending that there is any contract or kind of contract for the foundation of the action, although all the books agree in placing the defendant in the situation of the original debtor; again, the object of the framers of these rules was to take away the plea of nil debet, wherever it could be done. In actions on *penal* statutes, as in the case above cited, on the 22 Geo. 2, c. 46, s. 14, against a deputy clerk of the peace, for practising as an attorney at the sessions of the peace, and in the more recent case (u) in the exchequer, on the 2 & 3 Edw. 6, c. 13, s. 1, for penalties for not setting out tithes, the framers of the rules had not the power to take away the general plea, and simply because the statute of 21 Jac. 1, c. 4, s. 4, gave the power of pleading it in such actions, and giving the special matter in evidence under it; in actions for an escape *there is no statute* giving the general plea of nil debet or not guilty; and in this consists the difference. The fair inference therefore is, it seems, sanctioned by the more recent case, that the framers of the rule had the power to take away the plea of nil debet in all cases whether founded upon contract or not, except in cases where a defendant then was or thereafter should be entitled to plead the same, and give the special matter in evidence under it, by virtue of any act of parliament then or thereafter to be in force.

**Special
pleas.**

A retaking on fresh pursuit must be specially pleaded and verified by affidavit (x). A voluntary return *before action brought* is equal to a retaking on fresh pursuit, and must be specially pleaded (y). It must appear on the face of the plea that such recaption or return was before action brought, otherwise the plea would be demurrable (z). It must also appear that the defendant was in prison from the time of such recaption or return to the commencement of the action against the Sheriff, or until the defendant's legal discharge (a); if the declaration alleges (as it usually does) that the escape was voluntary, recaption on fresh pursuit is a good plea without traversing that the escape

(u) *Earl Spencer v. Swannell*, 3 M. & W. 154.

(z) 8 & 9 Will. 3, c. 27, s. 6; 2 Bl. 1059; 1 Tidd, 703.

(y) *Bonafous v. Walker*, 2 Term Rep. 126.

(z) *Stonehouse v. Mullins*, Str. 873.

(a) *Chambers v. Jones*, 11 East, 406.

was voluntary, as plaintiff must show in his replication that the escape was voluntary, if he means to rely on that fact (*b*). If the defence be, that the escape arose from inevitable accident, or the Queen's enemies, or any other matter which excuses the Sheriff in point of *law*, it must be specially pleaded.

As to evidence enough has been already stated for all practical purposes (*c*), except as to the judgment; and with regard to it, the evidence necessarily depends upon the plea pleaded—whether *nul tiel record* is pleaded or not (*d*); if *nul tiel record* is pleaded, the record itself if a record of the same Court must be produced; if of another Court superior or inferior, it is proved by the tenor of the record certified under a writ of certiorari; if *nul tiel record* is not pleaded, the record is proved by exemplification or by an examined copy.

Evidence specially of *nul tiel record*.

In this form of action (as before stated) the jury cannot give less than what the creditor would have recovered against the prisoner, namely, the sum indorsed on the writ, and the legal fees of execution.

Damages.

The Sheriff's remedy against the party escaping, when he has sustained damage, is by action on the case against him for such damage; *but note*, if the escape was *voluntary*, the Sheriff has no means of reimbursing himself.

Sheriff's remedy against party escaping.

SECTION IV.

FOR NOT ARRESTING WHEN THERE WAS AN OPPORTUNITY.

What constitutes an arrest in law has been already stated (*a*). An arrest, what constitutes.

The form of action for a breach of duty of this nature is an action on the *case*, and the declaration is, in matters of *inducement*, &c. similar to those already noticed for escapes, to the end of the statement of the delivery of the writ to the Sheriff, and then proceeds as follows :

(*b*) 1 Vent. 211.
(*c*) *Ante*, p. 368.

(*d*) *Vide* Tidd, 801.
(*a*) *Ante*, p. 310.

Form of remedy.

" And the plaintiff saith that the said *E. F.* at the time of the delivery of the said last mentioned writ to the defendant, so being such Sheriff as aforesaid, and from thence, to wit, for one month then next following, was within the said Sheriff's bailiwick, and the defendant as such Sheriff, at any time during that period, could and might and ought to have taken and arrested the said *E. F.* by virtue of the said last mentioned writ, at the suit of the plaintiff, if he would so have done, whereof the now defendant during all that time had notice; yet the now defendant not regarding, &c. did not nor would at any time whilst the said last mentioned writ was in full force, (although often requested so to do,) take or cause to be taken the said *E. F.* as by the said last mentioned writ he was commanded, but then wholly failed and made default [and (b) the said *E. F.* did not cause special bail to be put in for him in the said action in the said Court of _____, according to the exigency thereof, or otherwise observe the requisites of the said writ, but then wholly failed and made default] whereby," &c.

Pleas.

The Sheriff's duty and breach of duty here alleged are that " he could and might and ought to have taken and arrested the said *E. F.* by virtue of the writ;" but that he did not take him, or cause him to be taken as herein commanded.

The general plea of not guilty, therefore, as it operates " as a denial only of the breach of duty, and not of the facts stated in the inducement," simply puts in issue the fact of the Sheriff's neglect to arrest *when there was an opportunity*; all other pleas in denial must take issue on some particular matter of fact alleged in the declaration, and pleas in confession and avoidance must be specially pleaded.

The term *opportunity*, as used, may appear *prima facie* equivocal, at all events to require some explanation, more especially as one might from some (c) authorities be inclined to infer that without *express notice* of the debtor's being in the defendant's bailiwick, and when or *where* he was to be found, the Sheriff was guilty of no breach of duty; notice too is usually averred in the declaration, which in some degree supports this doctrine; but in the case of *Hereford v. M'Namara* (d) the declaration was specially demurred to, because of the omission of an averment of notice, and it was held unnecessary.

1

The Sheriff is bound to execute the process of the law in the

(b) It is not necessary to state this; 2 Ch. Pl. 518, and cases cited.

(c) *Gibbon v. Cogan*, 2 Camp. 189.

(d) 5 Dowl. & Ry. 97, recognized in *Dyke v. Duke*, 1 Arnold, 14.

most effectual way (e). If, therefore, a party against whom he holds a writ does not abscond, but continues in the daily exercise of his usual occupation, appearing publicly as usual, is visible to every person that comes to him about business, and the bailiff neglects to arrest him, upon proof of these facts, without proof of express notice to him of such information as will enable him to identify and arrest, the Sheriff is liable in damages for a breach of duty.

A Sheriff is bound to know every inhabitant in his bailiwick (f).

Sheriff bound to know every inhabitant in his bailiwick.
Evidence.

A bound-bailiff is not a competent witness for the defendant to prove that he endeavoured to make the arrest (g).

The plaintiff is only entitled to such damages as the jury think fit to give him, and such as he can prove to have actually sustained by the Sheriff's neglect; but if plaintiff prove his case, he will be entitled to nominal damages.

Damages.

SECTION V.

FOR NOT ASSIGNING BAIL BOND.

Bail bonds were not assignable at common law, but now if one be taken upon process at common law, the Sheriff is bound by the statute of 4 Anne, c. 16, s. 20, on the request and cost of the plaintiff or his attorney, to assign it, and if he refuse to do so, he is liable to an action on the *case* (a).

Bail bonds assignable.

Form of action.

As this action will necessarily henceforth be of rare occurrence in practice in consequence of the abolition of arrest on mesne process except in certain cases, it would be useless to do more here respecting the declaration, &c. than refer to the books of precedents wherein they are to be found (b); premising only,

Pleadings.

(e) *Beckford v. Montague*, 2 Esp. 475.

(f) 1 *Arnold*, 13, *supra*.

(g) *Powell v. How*, 2 *Ld. Raym.* 1411.

(a) *Hurlestone on Bonds*, 59.

(b) 2 *Ch. Pl.* 530.

that the breach of duty alleged in the declaration is, the refusal to assign the bail bond when requested so to do, and on having the costs of the assignment offered to him.

Plea of not
guilty,
effect of.

The plea of not guilty therefore as at present restricted, simply puts in issue these facts; all other pleas in denial must take issue on some particular matter of fact alleged in the declaration, and all matters in confession and avoidance be pleaded specially.

Of the issues, when the original debt, the issuing and delivery of the writ, the arrest, &c. are traversed, nothing more need be said.

If the giving the bail bond be in issue, notice to produce it should be given, and the service of such notice proved.

Evidence.

If the general plea be pleaded, a demand and refusal must be proved, and it would seem a tender of the costs of assignment, for a tender of costs seems a condition precedent, but the authorities do not seem to go so far as to require proof of this.

Damages.

The plaintiff is only entitled to such damages as a jury think fit to give him; but if he prove his case, he will, at all events, be entitled to nominal damages.

SECTION VI.

FOR CARRYING TO TAVERN OR TO PRISON WITHIN TWENTY-FOUR HOURS.

Debt for Penalty on 32 Geo. 2, c. 28.

As appears by the preamble of the statute (1759), so grievous and oppressive had the conduct of gaolers and inferior officers, in the execution of process for debt, become towards their distressed prisoners, that the legislature felt bound to interfere, and throw its mantle of protection around them; with this humane intent it was enacted, (amongst other things), "That no Sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or minister whatsoever, shall at any time or times hereafter convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody, by virtue or colour of any action, writ, process or attachment, to any

tavern, ale-house or other public victualling or drinking-house, or to the private house of any such officer or minister, or of any tenant or relative of his, without the free and voluntary consent of the person or persons so arrested or in custody, * * * nor shall carry any such person to any gaol or prison within twenty-four hours from the time of such arrest, unless such person or persons so arrested shall *refuse to be carried to some safe and convenient dwelling-house of his, her or their own nomination or appointment*, within a city, borough, corporation or market town, in case such person or persons shall be there arrested; or within three miles from the place where such arrest shall be made, if the same shall be out of any city, borough, corporation or market town, so as such dwelling-house be not the house of the person arrested, and be within the county, riding, division or liberty in which the person under arrest was arrested; and then and in any such case it shall be lawful to and for any such Sheriff, or other officer or minister, to convey or carry the person or persons so arrested, and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she or they may be sent to by virtue of the action, writ or process against him, her or them." Penalty 50*l.*, with treble costs of suit, (over and above such penalties or punishments as he or they shall be liable unto by the laws now in force.)

There must be a refusal.—It is a condition precedent to the right of the officer to take his prisoner to gaol within twenty-four hours from the time of the arrest. A refusal may be in many ways, a prisoner may nominate and then refuse to go, or he may refuse to nominate, or he may nominate and go, and then refuse to stay (a). A mere omission (b) or neglect to do an act is not a refusal, that word implies something more; neither is a mere submission. In one case (c) the officer said, "*you will go with me to the Granby*," his prisoner said "*very well*," and it was holden not to be a refusal within the meaning of the statute, only a mere submission to the will of one who did not give him, at least inform him that he had, a choice of place for a limited time. The officer should have said, "you have the choice of going to any dwelling-house for the next twenty-four hours to

There must
be a *refusal*.

Omission,
neglect or
submission
not enough.

(a) 4 B. & Ad. 972.

(c) *Dewhurst v. Pearson*, 1 Cr. &

(b) *Simpson v. Renton*, 5 B. & Ad. M. 372.

see your friends, where shall I take you to," or something of the like import.

Respecting
the place
nominated.

With respect to the *place nominated*, it is quite clear that the officer has a right to exercise his judgment as to its safety and convenience, otherwise a house might be nominated where a rescue was easy. The words "*safe and convenient*" dwelling-house are to be understood as safe and convenient for the Sheriff, not for the prisoner (*d*). Again, officers are not bound to take prisoners to any house to which they wish to go for any purpose their caprice may dictate, as to an attorney to *consult* him, but only to a safe and convenient dwelling-house for the purpose of *remaining there* during the twenty-four hours allowed by law; an insinuation has been thrown out that an attorney's house, even for the purpose of *remaining there*, is not a safe and convenient dwelling-house within the meaning of the statute, but upon what grounds does not seem quite clear; an attorney might be the *only friend* through whom the debt could be satisfied or bail given, and that his being accidentally an attorney should preclude a prisoner of his friend's assistance seems an odd conclusion, if not in direct contravention of the statute itself; moreover, for the Court to decide so would seem to involve a somewhat harsh inference regarding one of its own officers.

The twenty-
four hours
cannot be
abridged.

This space of twenty-four hours cannot be *abridged* of an instant of time; therefore the putting a prisoner into any state of being carried to prison before every instant of the time is expired, as the putting him upon a coach or the like, cannot be justified; for if it could be so abridged, the prisoner would not have the twenty-four hours, only a part of them, and in many cases the whole of the time might be consumed in carrying him thither, and thus the statute be wholly defeated (*e*).

Form of
remedy.

The action is in debt at the suit of the party aggrieved, to recover the penalty of 50*l.* (*f*), with treble costs of suit, in any of her Majesty's Courts of Record at Westminster.

Declara-
tion.

The Declaration (*g*) in *Silk v. Humphrey and another* stated

(*d*) *Silk v. Humphery*, 4 Ad. & E. 970.

(*e*) *Ibid.*; 1 Cr. & M. 372.

(*f*) Sect. 12.

(*g*) The venue is *local*, 21 Jac. 1, c. 4, s. 2; see 4 Ad. & E. 959; see also *Precedents* in 1 Cr. & M. 365; 3 Tyrw. 242. The first count may be

the issuing of a *capias* at the suit of *H. M.* against the plaintiff, indorsed for bail; its delivery to the defendant, being Sheriff of *Middlesex*, to be executed; that the defendant, by virtue thereof, took and arrested the plaintiff, and had and detained her in custody at the suit of *H. M.*; and by virtue, &c. carried the plaintiff so arrested, &c. to a certain gaol or prison within twenty-four hours from the time of the said arrest, though she, the plaintiff, did not refuse to be carried to a safe and convenient dwelling-house of her own nomination or appointment within three miles from the place where the plaintiff was so arrested; such place not being a city, borough, corporation or market town, and such dwelling-house not being the house of the plaintiff; contrary to the form, &c. whereby and by force, &c. the defendant forfeited and became liable to pay for the said offence to the plaintiff, being the party thereby aggrieved, the sum of 50*l.* &c.

To this the defendant may plead "*nil debet*" (*h*), and give the *Pleas*. special matter in evidence under it, the statute being *penal* and the judges having no power in such actions to deprive the defendant of the general plea; and the effect of the plea therefore is, to put the plaintiff on proof of all the statements in the declaration, just as if those rules had never been promulgated.

The evidence necessary to support the plaintiff's case may, it *Evidence*. is hoped, be sufficiently collected from the previous remarks upon the *refusal*, &c. as to need no further comment.

The plaintiff, if he makes out his case, will be entitled to the *Damages*. penalty of 50*l.*, with treble costs of suit, that is, the aggregate of—1*st*, the usual taxed costs; 2*d*, half thereof; and 3*d*, half the latter; in other words, the amount of the taxed costs and three-fourths thereof (*i*).

as in *Dewhurst v. Pearson* (if the fact) for carrying the plaintiff to a tavern without his free will and consent; the second count may be for taking plaintiff to prison within twenty-four hours.

(*h*) Or not guilty, 21 Jac. 1, c. 4, s. 4; *Faulkner v. Chevell*, 5 Ad. & E.

213; *Spencer v. Swannell*, 3 M. & W. 154; *ante*, 372.

(*i*) *Treble damages* are construed to mean actually treble the single damages. Thus if the jury give 20*l.* damages, the Court will award 40*l.* more, but not so of treble costs; 4 B. & Cr. 154; *Tidd's Pr.* 1025.

SECTION VII.

REFUSING TO ACCEPT BAIL.

On the 23 Hen. 6, c. 9.

The statute requires Sheriffs, &c. to let to bail all manner of persons "in their custody by force of any writ, bill or warrant in any action personal, or by cause of indictment of trespass upon reasonable sureties of sufficient persons, *being sufficient within the counties where such persons be so let to bail, &c.*" (a)

Remedies
against
Sheriff.

By force of this statute if the defendant tender sufficient sureties, that is, persons having sufficient (b) within the Sheriff's bailiwick, and the Sheriff refuse to accept them, he is liable to an action on the case, (but not in trespass, for the refusal does not make him a trespasser *ab initio*,) or he is liable in a *qui tam action of debt* for the penalty of 40*l.* given by the statute.

Declara-
tion.

The action on the case is by the party aggrieved, and a precedent of the declaration may be found in East's Reports (c); it states that he was duly in custody of the defendant by virtue, &c. which writ was indorsed for bail for £ , and that the plaintiff so being in the custody of the defendant, &c. on the same day, &c. tendered to the defendant, so being such Sheriff as aforesaid, reasonable sureties of sufficient persons, to wit, of *A. B.* and *C. D.*, and the same being then and there responsible and sufficient persons, having sufficient within the county of *C.*, in which said county the plaintiff was arrested, and so in custody as aforesaid, to become bail for the appearance of the plaintiff before our said lady the Queen, &c. on &c.; yet the defendants not regarding, &c. wrongfully and injuriously refused to accept the said sureties so offered by the plaintiff as bail for his appearance on, &c.

Pleas.

The breach here assigned is the refusal to accept the offered bail; the plea of *not guilty* therefore simply puts in issue the

(a) *Lovell v. Sheriffs of London*, 15 East, 324.

(b) No action lies against the Sheriff for taking insufficient bail, but he shall be amerced, if he has not the body forthcoming to appear and answer

the plaintiff; *Grosvenor v. Soame*, 3 Salk. 57; *Posterns v. Hanson*, 2 Wm. Saund. 61 c.

(c) 15 East, 320; see also the form in debt, 2 Ch. Pl. 330.

fact of refusal, and all other pleas in denial must take issue on some material fact, and all matters in confession and avoidance be specially pleaded. If, for instance, the *sufficiency* of the tendered bail be in question, that part of the declaration alleging their sufficiency must be specially traversed, and so forth.

If the declaration be in debt (d) for the penalty, the general Pleas in debt.
plea of "*nil debet*" may be pleaded, and the special matter be given in evidence under it (e).

In case the party grieved recovers treble damages (f); in Damages.
debt by the common informer, one-half of the 40*l.* goes to the Queen "*to be employed to the use of her house,*" the other to the party suing.

SECTION VIII.

EXTORTION.

To understand rightly the nature of the crime of extortion, it is of the first importance to know what fees are allowed by law and what not.

FEES are interpreted to mean the perquisites allowed to officers in the administration of justice as a recompence for their labour and trouble; ascertained either by acts of parliament, by the judges of the superior Courts, or other persons named by the legislature for that purpose; or by custom, which gives them an equal sanction with an act of parliament (a). Fees, definition of.

At common law an officer concerned in the administration of justice is entitled to no fee for doing his duty (b); and so inflexible is this principle, that all prescriptions contrary to it are said to be void (c); and as regards the fees now under consideration, this fundamental maxim of the common law is confirmed by the statute of Westminster 1, c. 26, which, Lord Coke says, was made in affirmance of the common law. By that statute it is enacted, "that no Sheriff shall take any reward to do his Fees at common law.

(d) 2 Ch. Pl. 331.

(e) See *ante*, p. 379.

(f) How calculated, see *ante*, 379.

(a) 1 Hawk. P. C. 419, s. 4; 2 New Abr. 463.

(b) 2 Inst. 176—210; Co. Litt. 368; *Walden v. Vessey*, Latch. Rep. 15;

Woodgate v. Knatchbull, 2 Term Rep. 150; *Graham v. Grill*, 2 M. & S. 297; *Dew v. Parsons*, 2 B. & A. 566; as to recovering a *quantum meruit* for his trouble, see *Moor*, 808; 2 Inst. 210; Staun. P. C. 49.

(c) *Moor*, 523; 2 Roll. Abr. 226.

office, but shall be paid of that which they hold of the King, and he that so doth shall yield twice as much, and be punished at the King's pleasure." And in commenting on this statute in his Institutes, he says, "that at this day they can take no more for doing their office than has been since this act allowed to them by authority of parliament; but as the common law gave no fees to Sheriffs, they became backward in executing writs by reason of the great danger in taking desperate men as well as in detaining them for fear of escapes; whereupon parliament thought fit to grant them fees in the reign of Queen Elizabeth, which they have had until this day" (*d*).

By statute law.

Since that period of time until the reign of her present Majesty, these fees were mainly ascertained and regulated by the following statutes;—as regarded them on *mesne process*, the 23 Hen. 6, c. 9, and its cumulative enactment, the 32 Geo. 2, c. 28, s. 12; on *final process*, the 28 Eliz. c. 4; on *crown debts*, the 3 Geo. 1, c. 15, ss. 3, 17; on *extents and liberates*, the 8 Geo. 1, c. 25; and the 43 Geo. 3, c. 46, s. 5, as to levying poundage fees, &c. &c.

It is to be regretted that the legislature, while professing to amend and consolidate the law, did not expressly repeal all the statutes theretofore in force, instead of leaving it to be extracted by dint of litigation whether they are so by implication or not; however, our aim being to expound the law as it is, and not as it should or might be, we proceed, without further comment, to show the effect of the recent enactment, and the remedies now in force against extortion by virtue of it.

How the old statutes are affected by 1 Vict. c. 55.

It will be observed, that the only one of the several statutes above alluded to *expressly* repealed as regards these fees, is that of 23 Hen. 6, c. 9; a question then as to the residue necessarily suggests itself; are they *by implication* (*e*) repealed, or is the recent enactment cumulative (*f*)? With the exception of the 32 Geo. 2, c. 28, and the 43 Geo. 3, c. 46, none seem to be now in force, and simply for this reason, because they contain a table of fees inconsistent with the present, and as the table fails so likewise the penalty necessarily fails; but not so of the 32 Geo. 2, c. 28, for the words of it are, "*any other or greater sum or sums of money than is or shall be by law allowed*"; the act containing

(*d*) Latch. 18; Cro. Eliz. 654, pl. 15; *Dew v. Parsons*, *supra*.
(*e*) 2 Dwaris on Stat. 674.

(*f*) *Sharp v. Warren*, 6 Price's Rep. 131.

no table or other specified quantum of Sheriff's fees, but only of gaoler's (*g*) fees; being so, the new enactment is but a cumulative enactment to the 32 Geo. 2, as the latter was considered to be to that of the 23 Hen. 6, and that an action is still maintainable on the 32 Geo. 2 by the party aggrieved, for the penalty of 50*l.* and treble costs of suit, "for taking any other or greater sum or sums of money than is or *shall* be by law allowed." As to the statute of 43 Geo. 3, c. 46, s. 5, it is enacted thereby, "that from and after * * * in every action in which the plaintiff or plaintiffs shall be entitled to levy under an execution against the goods of any defendant, such plaintiff or plaintiffs may also levy the poundage, fees and expenses of the execution over and above the sum recovered by the judgment;" whensoever then the execution is against the goods of the defendant, the poundage, fees and expenses, according to the table hereinafter mentioned, (there being nothing inconsistent with the above clause in the statute of Victoria,) may be levied by the plaintiff as heretofore. Such, it is submitted, is the present law, whatever was the intention of the legislature thereon.

The following is the statute of 1 Vict. c. 55, (15th July, 1837,) 1 Vict. c. 55. intituled, "An Act for better regulating the Fees payable to Sheriffs upon the execution of Civil Process."

"Whereas it is expedient to amend the laws relating to the fees payable to Sheriffs, Under-sheriffs, Deputy-sheriffs, Sheriffs' agents, bailiffs, and others the officers or ministers of Sheriffs in England and Wales, and to give the Courts of Record at Westminster Hall a due control over such fees; and also to provide a summary remedy against such officers and others as shall extort or receive other or greater fees than by law they shall be entitled to: and whereas divers enactments touching the said officers, contained in certain ancient statutes, have become inconvenient, and ought to be repealed:" Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of an act passed in the forty-second year of his late Majesty King Edward the Third, intituled *Part of 42*
Estreuts shall be showed to the Party indebted, and that which is paid shall Edw. 3,
be totted: no Sheriff, &c. shall continue in Office above a Year, c. 9;
as relates to the time during which Under-sheriffs and Sheriffs' clerks may abide in their respective offices; and also an act passed in the first year of the reign of his late Majesty King Henry the Fifth, intituled *Sheriffs' Bailiffs* the act,
shall not be in the same Office in Three Years after: Sheriffs' Officers 1 Hen. 5,
shall not be Attornies; c. 4;
and also so much of an act passed in the twenty-third year of the reign of his late Majesty King Henry the Sixth, intituled

and part of
23 Hen. 6,
c. 9,
repealed.

Fees to be
allowed by
taxing officer
of
Courts at
Westminster.

To prevent
officers
taking fees
not allowed
or greater
fees than are
allowed ;

and other
persons
from taking
any fees.

Court may
award costs.

Fees to the
Sheriffs of
Lancashire
and Durham.

Act may be
altered this
session.

No Sheriff shall let to farm his county or any bailiwick : the Sheriffs' and Bailiffs' Fees and Duties in many Cases, as relates to the fees to be taken by Sheriffs, Under-Sheriffs, Sheriffs' clerks, and other officers and ministers of Sheriffs, be and the same are hereby repealed.

2. And be it enacted, that from and after the passing of this act it shall be lawful for Sheriffs, or their officers concerned in the execution of process directed to Sheriffs, to demand, take and receive such fees, and no more, as shall from time to time be allowed by any officer of the several courts of law at Westminster charged with the duty of taxing costs in such Courts, under the sanction and authority of the judges of the said Courts respectively.

3. And be it enacted, that any Sheriff, officer, or minister acting in the execution of process directed to any Sheriff or Sheriffs, or engaged or concerned therein, who shall extort, demand, take, accept or receive from any person or persons any fee or fees, gratuity or reward not allowed as aforesaid, or greater in amount than as allowed as aforesaid, such Sheriff, or other his officer or minister, upon complaint thereof made against him to any of the said Courts, and on proof being made thereof upon oath, either by the examination of witnesses *vidé voce*, or on affidavits, or on interrogatories, to the satisfaction of the Court to which the said complaint shall be made, that such Sheriff, officer or minister, as the case may be, hath offended therein as aforesaid, then and in such case every such Sheriff, officer or minister, as the case may be, shall be adjudged guilty of a contempt of such Court, and punished by such Court accordingly ; and if any person, not being such officer or minister as aforesaid, shall assume or pretend to act as such, and shall extort, demand, take, accept or receive any fee or fees, gratuity or reward under colour or pretext of such office, he shall, on like complaint and proof, be in that respect dealt with by the Court in like manner.

4. And be it enacted, that in all cases of summary complaints as aforesaid, the Court before which such complaint shall be preferred, may, at its discretion, award the costs of or occasioned by such complaint to be paid by either party to the other ; such costs to be taxed by the master of such Court : provided always, that no such complaint shall be entertained unless made before the last day of term next following the act whereof complaint is made.

5. And be it enacted, that from and after the passing of this act the Sheriffs of Lancashire and Durham, and their officers, shall have and be entitled to the like fees, and no more, upon process issuing out of the Court of Common Pleas at Lancaster and out of the Court of Pleas at Durham respectively as from time to time shall be allowed under the authority of this act to Sheriffs upon process issuing from the Superior Courts at Westminster ; and that the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, or any judge thereof respectively, being also judge of one of the superior Courts at Westminster, shall have the same powers in every particular, with respect to offences against this act upon process issuing out of the said Court of Common Pleas at Lancaster and Court of Pleas at Durham respectively, as are herein-before given to the Courts at Westminster respectively in respect of process issuing from those Courts.

6. And be it enacted, that this act may be amended, altered or repealed by any act to be passed in the present session of parliament.

And by virtue of the power granted by the second section,

the judges, on the 20th day of December, A. D. 1837, sanctioned and authorized the following

TABLE OF FEES.

	£.	s.	d.
<i>For every Warrant which shall be granted by the Sheriff to his Officer, upon any Writ or Process:—</i>			
In London and Middlesex	0	2	6
And on crown and outlawry process, an additional	0	2	6
In all other counties, where the most distant part of the country shall not exceed 100 miles from London	0	5	0
Not exceeding 200 miles	0	6	0
Exceeding 200 miles	0	7	0
For an arrest in London	0	10	6
In Middlesex, not exceeding a mile from the General Post Office	0	10	6
Not exceeding seven miles from same place	1	1	0
In other counties, not exceeding a mile from officer's residence	0	10	6
Not exceeding seven miles	1	1	0
Exceeding seven miles	1	11	6
For conveying the defendant to gaol from the place of arrest			
<i>per mile</i>	0	1	0
For an undertaking to give a bail bond	0	10	6

FOR A BAIL BOND.

If the debt shall not exceed £50	0	10	6
Do. £100	1	1	0
Do. £150	1	11	6
Do. £300	2	2	0
Do. £400	3	3	0
Do. £500	4	4	0
If it shall exceed £500	5	5	0
For receiving money under the statute upon deposit for arrest, and paying the same into Court, if in London or Middlesex	0	6	8
If in any other county	0	10	0

FOR FILING THE BAIL BOND.

If the arrest be made in London or Middlesex	0	2	0
If in any other county	0	4	0

ASSIGNMENT OF BAIL OR OTHER BOND.

If in London or Middlesex	0	5	0
If in any other county, including postage	0	7	6
For the return to any writ of habeas corpus, if one action	0	12	0
And for each action after the first	0	2	6
For the bailiff to conduct prisoner to gaol <i>per diem</i>	0	10	0
And travelling expenses <i>per mile</i>	0	1	0
For searching offices for detainers	0	1	0
Bailiff's messenger for that purpose	0	2	6
To the bailiffs, for executing warrants on extent, capias utlagatum, levavi facias, fieri facias, ca. sa., ne exeat, attachment, elegit, writ of possession, forfeited recognizance, process from Pipe Office, and other like matters, for each, if the distance from the Sheriff's office or the bailiff's residence do not exceed five miles	1	1	0
If beyond that distance <i>per mile</i>	0	0	6

	£.	s.	d.
On distringas in London	0	5	0
In Middlesex, not exceeding five miles from General Post Office	0	5	0
Exceeding five miles	0	10	0
In other counties, not exceeding five miles from officer's residence	0	5	0
Exceeding five miles	0	10	0
For each man left in possession, when absolutely necessary.			
If boarded <i>per diem</i>	0	3	6
If not boarded <i>per diem</i>	0	5	0
For every sale by auction, notwithstanding the defendant should become bankrupt or insolvent, where the property sold does not produce more than 300 <i>l.</i> 5 per cent. —480 <i>l.</i> 4 per cent.—500 <i>l.</i> 3 per cent., and where it exceeds 500 <i>l.</i> 2½ per cent.			
For the certificate of sale, to save auction duty	0	2	6
Bond of indemnity, besides stamps	1	10	0
Certificate of execution having issued for record	0	5	0

ON WRITS OF TRIAL AND INQUIRY.

For a deputation	1	1	0
On lodging writ for entering cause and warrant for summoning jury, which fee shall be forfeited in case of countermand of trial	0	4	0

ON TRIAL OR INQUISITION.

Sheriff for presiding	1	1	0
Bailiff for summoning jury, and attendance in Court	0	4	0
And if held at the office of the Under-sheriff.			
For hire of room, if actually paid, not exceeding	0	10	0
For travelling expenses of Under-sheriff from his office to place where trial or inquisition held <i>per mile</i>	0	1	0
To the bailiff, from his residence <i>per mile</i>	0	0	6
In all cases in which it shall appear to the master that a saving of expense has accrued to the parties by reason of a writ of trial having been executed by deputation, the fee for such deputation shall be allowed.			
On writs of extent, elegit, capias utlagatum, and others of the like nature; for summoning the jury, use of room, presiding at the inquisition, &c.	2	2	0
Jury	0	12	0
For travelling expenses of Under-sheriff from his office to the place of inquisition <i>per mile</i>	0	1	0
For drawing and engrossing the inquisition <i>per folio</i>	0	1	6
For a summons for the attendance of a witness	0	5	0

IN REPLEVIN.

Bond, upon the same scale as the Bail-bond.

Precept to bailiff	0	2	6
Notice for service on defendant	0	2	6
Broker, where the sum demanded and due shall exceed £20, and shall not exceed £50, for appraisement and affidavit of value	0	10	6
Where it shall exceed £50	1	1	0
And his travelling expenses from his residence to the place where the goods are <i>per mile</i>	0	0	6

	£.	s.	d.
Bailiff for summoning parties and delivering goods to tenant .	1	1	0
And his travelling expenses same as broker.			
For the warrant, record, and return of a re. fa. lo., accedas ad curiam, pone, or writ of false judgment	0	16	6
For writ retorno habendo	0	4	6
For each summon on a writ of sci. fa., or for the service of writ of capias where no arrest	0	5	0
And mileage <i>per mile</i>	0	1	0
For recording each demand or proclamation under writs of outlawry	0	2	0
For bailiff for making each demand or proclamation on writs of outlawry in London and Middlesex	0	2	6
In other counties	0	5	0
And travelling expenses if the distance shall exceed five miles, then for every mile beyond that distance	0	0	6
For any supersedeas, writ of error, order liberate or discharge to any writ or process, or for the release of any defendant in custody (unless in the prison of the county), or of goods taken in execution	0	4	6
For the return of any writ or process, and filing same, exclusive of the fee paid on filing	0	1	0

JURY PROCESS.

For return to common venire	0	3	6
The like to special	0	5	0
The like on distringas or habeas corpus for common jury	0	12	0
The like for special jury	0	14	0
The like with a view	1	0	0
The like to a traverse venire	0	14	6
For attendance naming special jury	2	2	0
Twenty-four warrants to summon special jury	1	4	0
For bailiff for summoning each special juror	0	2	0
Sheriff attending in Court	1	1	0
For attending a view, the fees as allowed by Rule of Court Trinity Term, 7 Geo. 4, 1826.			

For any Duty not herein provided for, such sum as one of the Masters of the Courts of King's Bench or Exchequer, or one of the Prothonotaries of the Court of Common Pleas, may upon special application allow.

ADDENDA.

BOND IN REPLEVIN.

Instead of the allowance of the fees upon the same scale as the bail-bond, the fee of £1. 1s. only is allowed, whatever be the amount, if above £20	1	1	0
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FEES ON WRITS OF TRIAL AND INQUISITION.

The travelling expenses of the Under-sheriff from his office, and of the bailiff from his residence to the place where the trial or inquisition is held, are to be apportioned rateably to the parties, if more than one trial or inquisition be held at the same time and place.

Signed by all the Judges, and ordered to be enrolled.

Extortion,
definition
of.

Having thus ascertained what fees are by law allowed to Sheriffs in the execution of civil process, &c., it becomes more easy to comprehend and define the offence of extortion.

EXTORTION in a large sense denotes any oppression under colour of right; but it is usually (as here) applied to that abuse of public justice, which consists in the unlawful taking of money or valuable thing by any officer *colore officii* (*h*) from another, when none at all is due, or not so much is due, or before it is due: "*extortio est crimen quando quis colore officii extorquet quod non est debitum vel quod supra debitum vel ante tempus quod est debitum*" (*i*). The distinction between *bribery* and *extortion* seems to be this: the former offence consists in the *offering* a present, or receiving one if offered; the latter, in *demanding* one by colour of office.

Refusing to
execute
writ until
fees are paid
extortion.

This being the definition and nature of the offence, it follows that if an Under-sheriff refuse to execute a *ca. sa.* or *fi. fa.* &c., unless his fees are paid, the High Sheriff will be liable in damages for not doing his duty; or *after taking the fees*, because taken before due, the officer so taking them will be guilty of extortion (*k*); so likewise it is extortion to take a bond for his fee before execution is sued out (*l*); or to admit a prisoner to bail upon an agreement to receive a certain sum when the prisoner should pay to a third person another sum of money (*m*); or the taking any thing of any person for the sparing, not warning, or not returning him to serve as a juryman or otherwise at the assizes, sessions of the peace, or at any other Court; or the taking of money or other reward for omitting to arrest or attach another, or for any other omission of duty, is extortion; so if the Sheriff or gaoler detains one in prison (after being duly discharged) for meat, drink, or other thing, except for their lawful fees only, it is extortion.

Other in-
stances of
extortion.

Declaration
for extortion
on *mesne*
process.

For extortion on *mesne process*, when the officer exacted from the defendant more than what was allowed by law, the course

(*h*) Dist. "*virtute officii*" and "*colore officii*," 2 Inst. 206; Co. Litt. 368.

(*i*) 10 Co. Rep. 102; Co. Litt. 368; 2 Salk. Rep. 680; 1 Hawk. P. C. 419; Archb. Crim. Pl. 494, and cases cited.

(*k*) *Hescott's Ca.* 1 Salk. Rep. 330; 1 Hawk. P. C. 419.

(*l*) Hut. 53; *Ex parte Evans*, 2 Bos. & Pul. 88.

(*m*) 2 Burr. 924.

was to declare *in debt* at the suit of the party grieved, against the Sheriff or the party offending, thus :

1st count, on the 23 Hen. 6, c. 9, for treble damages, &c.

2d count, on 32 Geo. 2, c. 28, for the 50*l.* penalty, &c.

3d count, for money had and received, that is, for the excess over legal fees. The two last counts (the statute of Hen 6 being expressly repealed) may still be inserted, and that too consistently with the pleading rules of Hilary term, 4 Will. 4, as they are for distinct causes of action.

For extortion on *final process*, it was usual for the party grieved to declare in debt on the 28 Eliz. c. 4, for treble damages, thus :

For extortion on final process.

1st count, on statute for treble damages, &c.

2d, money had and received.

Or to proceed in debt at the suit of the *common informer* on the 23 Hen. 6.

Debt.

Or on the 28 Eliz. as the case might be (*n*).

Or to proceed by indictment at common law against the party offending (*o*).

Indictment.

The present remedies then (if the effect of the recent statute be as stated) are the following :

Present remedies.

1. On the 32 Geo. 2, c. 28, for the 50*l.* penalty.

2. By summary application to the Court on 1 Vict. c. 55, which is *cumulative* (*p*).

3. By *indictment at common law*.

The statute of 32 Geo. 2 enacts, " That no Sheriff, &c. shall demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other or greater sum or sums of money *than is or shall be by law allowed* to be taken or demanded for any arrest or taking, or for detaining or waiting till the person or persons so arrested or in custody shall have given an appearance on bail," &c., under the penalty of 50*l.*, to be recovered with *treble* costs of suit by action of debt, &c.

32 Geo. 2.

The declaration, (if the action be brought against the *High Sheriff*, as it may be) (*q*), after stating the issuing of the *capias*, delivery to the Sheriff, and the arrest, proceeds to allege the de-

Declaration.

(*n*) See Prec. 2 Ch. Pl. 330, 332.

(*o*) *Smith v. Malt*, 2 Roll. Rep. 263.

(*p*) *Sharp v. Warren*, 6 Price, 131; Cowp. 297.

(*q*) 2 Term Rep. 154.

defendant's extortion, thus (r): "And the now plaintiff further saith, that after he had been so arrested, and whilst he remained in the custody of the now defendant under colour of the said writ for the cause aforesaid, to wit, on, &c. last aforesaid, not regarding the statute in such case made and provided, demanded, took, and received of and from the now plaintiff a certain sum of money, to wit, the sum (s) of , in addition to and exclusive of the officer's fees, and all other legal incidental expenses for making the said arrest (t), which said sum of money so demanded, taken and received by the now defendant of and from the now plaintiff in manner and for the cause aforesaid, then was and is a greater sum of money, to wit, than at the time of the taking thereof was by law allowed to be demanded or taken by the now defendant of and from the now plaintiff. Whereby and by force of the statute, &c. the now defendant forfeited," &c.

2d count, money had and received.

3d count, account stated.

Pleas.

To the special count the defendant may (it being on a *penal* statute)(u) plead "*nil debet*," and give the special matter in evidence under it, and its effect is, if pleaded, to put the plaintiff in proof of all the material allegations in his declaration in the first instance.

Evidence.

To establish the defendant's extortion (the other allegations having been already considered) plaintiff should produce a proper table of fees. In *Martin v. Bell* (x), where there was no table applicable to the fees in question, it was holden that evidence of the allowance by the officer of the Court upon taxation was *prima facie* evidence of what was allowed by law: and this evidence would seem, on reference to the words of the statute of *Victoria*, sufficient at this day without the production of a table of fees (y).

(r) 2 Ch. Pl. 323, where action is brought against the *bailiff*, as it may be, *ante*, p. 359.

(s) The sum actually taken must be stated, *Ashby v. Harris*, 2 M. & W. 673; 5 Dowl. 742, S. C.

(t) "The making the arrest," or

"detaining," or "waiting," as the case may be; the offence must be correctly described.

(u) *Ante*, p. 372.

(x) 6 M. & S. 224.

(y) *Martin v. Slade*, 1 New Rep. 59.

The plaintiff is entitled to recover the 50*l.* penalty, with *treble* costs of suit (z).

Treble costs how calculated.

2. By summary application to the Court under 1 Vict. c. 55 (a).

Summary application to the Court under the new statute.

Complaint may be made upon oath either by the examination of witnesses *virâ voce*, or on affidavits, or on interrogatories, and the party offending (if the complaint be made *in due time*, that is, before the last day of the term next following the act whereof complaint is made) will be adjudged guilty of a contempt of Court, and punished accordingly.

Affidavit.

In the Queen's Bench.

Between { *A. B.* Plaintiff,
and
 { *C. D.* Defendant.

C. D. of —, —, the above named defendant, maketh oath and saith, that *A. B.*, the above named plaintiff, on or about the day of —, A. D. 1839, in the Court of Queen's Bench recovered against this deponent a certain debt of £ —, and also costs, which in and by the consideration and judgment of the same Court were adjudged to him, the said *A. B.* for his damages which he had sustained, as well by the occasion of the detaining of the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof this deponent was convicted: and this deponent further saith, that the said judgment being in full force and the said debt and damages remaining unpaid and unsatisfied, the said *A. B.*, on, &c., for the obtaining of satisfaction thereof, sued and prosecuted out of the said Court of Queen's Bench a certain writ of our lady the Queen, called a *fiери facias*, directed to the Sheriff of Westmoreland, by which said writ our lady the Queen commanded the said Sheriff that of the goods, chattels, monies, bank notes, cheques, bills of exchange, promissory notes, and other securities for money of this deponent in the said Sheriff's bailiwick, he should cause to be levied the debt and damages, and that he should have that money before our lady the Queen at Westminster aforesaid immediately after the execution thereof, to render to the said *A. B.*, the above named plaintiff, for his debt and damages aforesaid: and this deponent further saith, that the said writ was afterwards and before the delivery thereof to the said Sheriff, that is to say, on or about, &c., duly indorsed with a direction for the said Sheriff to levy £ —, besides Sheriff's poundage, officers' fees, and all other incidental expenses: and this deponent further saith, that the said writ so indorsed, afterwards and before the said execution thereof, that is to say, on, &c., was delivered to Henry Earl of Thanet, who then and from thence until and at and after the execution of the said writ, was Sheriff of the said county of W., to be executed in due form of law: and this deponent further saith, that by

(z) How calculated, see *ante*, p. 379.

(a) *Vide* statute set out at length, *ante*, p. 383.

virtue of the said writ, the said Henry Earl of Thanet, so being such Sheriff, afterwards, that is to say, on, &c., for having execution of the said writ duly made his warrant in writing, directed to one *E. F.*, who then and from thence until and at and after the committing of the offence hereinafter mentioned, was one of the bailiffs of the said Sheriff of the said county of *W.*, by which said warrant the said Sheriff of the said county of *W.* commanded the said *E. F.* that of the goods, chattels, monies, cheques, bank notes, bills of exchange, promissory notes, and other securities for money of this deponent, in his the said Sheriff's bailiwick, he should levy £ , besides Sheriff's poundage, officers' fees, and all other incidental expenses: and this deponent further saith, that the said Sheriff's warrant so marked for the levy of £ , besides, &c., afterwards and whilst the said writ of *feri facias* was in full force, on, &c., was delivered to the said *E. F.*, then being one of the bailiffs of the said Sheriff of the said county of *W.*, to be executed in due form of law: and this deponent further saith, that by virtue of the said writ and warrant, the said *E. F.* as such bailiff, afterwards and before the return of the said writ, that is to say, on, &c., and within the bailiwick of the Sheriff of the said county, levied of the goods, chattels, monies, bills of exchange, promissory notes, and other securities for money of this deponent, £ , besides Sheriff's poundage, officers' fees, and all other incidental expenses, according to the tenor and effect of the said warrant: and this deponent further saith, that the said *E. F.* as such bailiff as aforesaid, did then, under colour of his said office and the said writ and warrant, extorsively levy of the goods, chattels, bank notes, cheques, promissory notes, bills of exchange, and other securities for money of this deponent, in addition to and exclusive of the said sum of £ so indorsed upon the said writ, and Sheriff's poundage, officers' fees, and all other incidental expenses, another large sum of money, that is to say 5s., contrary, &c.

Sworn, &c.

Costs of application.

The Costs are in the discretion of the Court.

Proceeding by indictment.

3. By *indictment* at common law.

SECTION IX.

FOR TAKING GOODS OFF PREMISES WITHOUT SATISFYING LANDLORD.

On Stat. 8 Ann. c. 14.

Statute of
8 Anne
c. 14.

The statute enacts "that from, &c. no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out *shall, before the*

removal of such goods from off the said premises by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking of such goods or chattels by virtue of such execution, *provided the said arrears of rent do not amount to more than one year's rent*; and in case the said arrears shall exceed one year's rent then the said party at whose suit such execution is sued out, paying the said landlord, or his bailiff, *one year's rent*, may proceed to execute his judgment as he might have done before the making of this act; and the Sheriff, or other officer, is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money."

Amount to be paid to landlord.

By 11 Geo. 4 and 1 Will. 4, c. 11, the statute is extended to process by *pone per vadios* out of the Court of the county palatine of Durham (a).

Upon this statute of Anne it has been decided that the immediate landlord, but not a ground landlord, is intended (b); that an executor or administrator (c) is entitled to the benefit of the statute as to arrears due to the testator in his lifetime (d); that a trustee of an outstanding satisfied term assigned in trust to attend the inheritance is within its provision (e); and that the statute extends to an execution at the suit of a *defendant* (f) for costs, as well as to that of the *plaintiff* (f). It has also been holden that goods seized under a *capias utlagatum* are liable for a year's rent (g). It seems that under a sequestration issued out of the Court of Chancery the landlord is entitled to be paid arrears of rent (h); but that a fiat in bankruptcy is not an execution within the meaning of the act (i); and goods seized under an extent in aid are not liable to a year's rent (j).

Cases within the statute.

The statute is not confined to an original demise of entire premises, but applies as well to a sub-lessee and to goods taken

(a) See *Brandling v. Barrington*, 6 B. & C. 467.

(b) 2 Str. Rep. 787, *Bennet's case*; see vide 1 Str. 97.

(c) Woodfall, ed. by Harr. 345.

(d) 1 Str. Rep. 212.

(e) 4 Moore, 473.

(f) *Henchett v. Kimpson*, 2 Wils. 140.

(g) *St. John's Col. v. Muscott*, 7 Term Rep. 259; *Greaves v. D'Acastro*, Bunb. 194; see *Brandling v. Barrington*, 6 B. & Cr. 472.

(h) *Dixon v. Smith*, 1 Swanst. 457.

(i) 1 Rose, 342; *Lee v. Lopes*, 15 East, 230.

(j) *Rex v. De Caux*, 2 Price, 17.

in execution on part of the subject-matter of the original demise (*k*). The money claimed must be due as *rent*, and due for a year immediately preceding the execution (*l*). Rent stipulated by the lease to be paid in advance is not due at the time of the seizure, within the meaning of the statute of Anne (*m*). The landlord is entitled to his rent without any deduction for poundage (*n*), which the Sheriff must levy in the first instance (*o*); he is entitled to a full year's rent even although he has been used to remit some portion of it to his tenant (*p*); but only one year's rent is to be paid, although there are two executions (*q*). The statute is confined to rent due "*at the time of the taking*," therefore for rent which accrues after the taking, and during the continuance of the Sheriff in possession, no claim can be made upon the Sheriff: thus, a Sheriff who takes corn in the blade under a *fi. fa.* and sells it before the rent is due is not liable to the landlord under the statute, that is, for rent accruing subsequently to the seizure and sale, although he has given notice and although the corn be not removed from the premises until long afterwards (*r*). Again, the statute contemplates a subsisting tenancy at the time of the execution, therefore no claim can be made upon the Sheriff for rent which has accrued due since the day of a demise laid in an ejectment for the same premises; for by bringing ejectment the landlord treats him as a trespasser and not as a tenant (*s*). Again, the statute applies only to cases when the judgment creditor claims *adversely* to the landlord, and not where the execution is sued out at the instance of the landlord himself (*t*).

Notice of
landlord's
claim.

In order to render the Sheriff responsible for noncompliance with the act he must have notice of the landlord's claim; as to the nature of the notice the rule deducible from these authorities seems to be, that no specific notice is required by the statute, for the notice to the Sheriff is only for the purpose of

(*k*) *Thurgood v. Richardson*, 7 Bing. 428; 4 Car. & P. 481.

(*l*) *Saunders v. Musgrave*, 6 B. & C. 524; *Cook v. Cook*, Andr. 219.

(*m*) *Harrison v. Barry*, 7 Price, 690.

(*n*) Str. Rep. 643.

(*o*) *Collyer v. Spur*, 4 Moore, 473; 2 B. & B. 67.

(*p*) *Williams v. Lewsey*, 1 M. & Sc. 92; 8 Bing. 28.

(*q*) 2 Str. Rep. 1024; 5 Moore, 97.

(*r*) *Gvillim v. Barker*, 1 Price, 274; *Hoskins v. Knight*, 1 M. & S. 245.

(*s*) *Hodgson v. Gascoigne*, 5 B. & A. 88.

(*t*) *Taylor v. Lanyon*, 6 Bing. 536.

establishing beyond doubt his knowledge of the landlord's claim; and if that knowledge can by any other means be brought home to him at any time before he has parted with the money he will be liable (u). If the execution be overreached by an act of bankruptcy and fiat, the Sheriff, in an action by the assignees, can only avail himself of payment to the landlord by proving that it was made before notice of the fiat issued (x). In case of bankruptcy.

A bill of sale taken on a fi. fa. is a sufficient removal of the goods within the statute (y). Bill of sale a removal.

It may happen that the goods on the premises are not sufficient to satisfy the year's rent, if so, upon notice or knowledge of the fact of arrears of rent, he must withdraw; if he chooses to sell, the Court will not stay proceedings in an action against him on paying over the proceeds of the sale (z). Where not sufficient on premises to satisfy landlord.

The landlord's remedy against the Sheriff is,
1. By action on the case (a).

Form of remedy.

Or 2. By application to the Court for the amount of the goods sold.

Note, An action for money had and received will not lie against the Sheriff for the year's rent before or after sale (b).

The declaration (by the party grieved) states the subsisting tenancy—the arrear of rent claimed—the levy—notice to the defendant before removal—and breach of duty—viz. that the defendant “wrongfully, injuriously and deceitfully removed and carried away the said goods and chattels so taken as aforesaid from and out of the said messuage and tenement, with the appurtenances, without paying or satisfying the plaintiff the said arrears of the said rent so due and owing, and in arrear to him aforesaid, or any part thereof, contrary to the form of the statute in that case made and provided, &c.” Declaration.

(u) *Andrews v. Dixon*, 3 B. & A. 646. See also *Collyer v. Spur*, 2 Brod. & Bing. 67; 4 Moore, 473.

(x) *Lee v. Lopes*, 15 East, 230.

(y) *Rotherog v. Wood*, 3 Camp. 24; *West v. Hodges*, Barnes, 211.

(z) *Foster v. Hilton*, 1 Dowl. 35; *vid.* 2 B. & Ad. 418.

(a) *Levy v. Goodson*, 4 Term Rep. 687.

(b) *Green v. Austin*, 3 Camp. 260.

Pleas. *The plea of "not guilty" as at present restricted simply puts in issue what is contained in the above averment, namely, the fact of removal without satisfying the year's rent—and all other matters, the occupation—arrears of rent as alleged—the writ—or notice must be denied, and all other matters in confession and avoidance specially pleaded (c).*

Evidence. To prove the rent due (if denied) the tenant himself may be made a competent witness by a release (d); but in *Harrison v. Barry* (e) it was holden sufficient to prove the occupation by the tenant: and that it lies on the Sheriff to show that the rent has all been paid.

Proceeding by motion to the Court. 2. By motion to the Court (f): which is an application to the equitable jurisdiction of the Court to have restitution to the amount of the goods sold if less than a year's rent, if more, then to have so much as will satisfy a year's rent: indeed this seems to be the only remedy, (independently of its being a more speedy one under any circumstances,) when the removal takes place before notice of there being rent due; for, upon motion, the Court will relieve the landlord at any time while the proceeds remain in the Sheriff's hands (g).

SECTION X.

FOR FALSE RETURN.

General observations on the nature of returns. Before entering into the details of the action for a false return, a few general observations upon the character of returns may not, perhaps, be deemed here out of place.

A return is the Sheriff's answer or certificate to the Court, touching that which he is commanded to do by any writ directed to him (h); it is in its nature general or special; if general, it is usually indorsed on the writ itself: if special, it is commonly engrossed on a distinct schedule or piece of parchment, and annexed to the body of the writ, at the same time indorsing

(c) See *Groombridge v. Fletcher*, 2 Dowl. 353.

(d) *Thurgood v. Richardson*, 5 M. & P. 266; 7 Bing. 428.

(e) 7 Price, 690.

(f) *Henchet v. Kimpson*, 2 Wils.

140; and vide *Groombridge v. Fletcher*, 2 Dowl. 353.

(g) See *Motions under the Interpleader Act*, ante, p. 350; and 3 B. & Ald. 440; 2 Sell. Fr. 570.

(h) Dalt. 162.

these words on the writ, "the execution of this writ appears in a certain schedule hereunto annexed."

The Sheriff must set his surname and christian name to a return, so that the Court may know of whom it took the return, if need be (*i*); it is not necessary that it be set *sud propriâ manu*, it may, and is in general, if not always, done by the Under-sheriff; but all returns must be in the name of the High Sheriff, and if his name be omitted he is at all events punishable if the return be not absolutely void (*k*). Where there are two persons, as in counties corporate, the names of both must be set thereto, for in law they constitute but one officer (*l*): so if a return be by coroner or elizors (*m*), all must sign it (*n*); but if the writ be directed to coroners generally and not *nominatim*, the return may be made by the survivors in case of death, for the survivors are coroners (*o*); but aliter in the case of Sheriffs: if the Sheriff die, the Under-sheriff, before a new appointment, must return the writ *in the name of the deceased Sheriff* (*p*). Form of, and by whom made.
In the case of death.

A new Sheriff may make a return of a writ directed to his predecessor in office, because it is directed to one as Sheriff, and not by this or that name (*q*). In the case of a new appointment.

The certainty required in returns (superseding all notice of Lord Coke's (*r*) definition and division of certainty) is not in degree such as the law requires in pleadings, or in writs, or in indictments (*s*); in short, if the whole command of the writ be shown to be performed in substance it is sufficient (*t*); as *captus est* to a *capias*, *attachiatus est* to an attachment, without saying where, by whom, or how; so if it refers to the writ without repeating the words of it (*u*); surplusage will not vitiate a return. But although as to certainty of form a laxity prevails, as com- Certainty of form.

(i) Plowd. 63 a; 12 Edw. 2. c. 5; Fitz. Return, 8; Carth. 56; see *Ingolby v. Martin*, Str. Rep. 316, where a return in the name of *George* instead of *Henry* was holden well enough. See the statutes of *jeofails*, 21 Jac. 1, c. 13, s. 2; 16 & 17 Car. 2, c. 8; and 4 & 5 Anne, c. 16.

(k) 3 Bulstr. 78; 1 Bulstr. 73; Vin. Abr. Ret. C.; *Dalston v. Thorp*, Cro. Eliz. 767.

(l) *Ante*, p. 6.

(m) Hob. 70; *ante*, p. 117.

(n) *Ibid.*; 39 Hen. 6. c. 41.

(o) Vin. Abr. Ret. D.

(p) 3 Geo. 3, c. 15, s. 8.

(q) *Gibbons v. Roberts*, 1 Salk. Rep. 266.

(r) Co. Litt. 303 a; 5 Co. 121; *Dovaston v. Payne*, 2 H. Bl. 530; Dougl. 158.

(s) *Wilson v. Law*, 2 Salk. Rep. 589; Skin. Rep. 552.

(t) *Ibid.*; 2 Roll. 461, c. 2.

(u) 2 Salk. Rep. 589.

pared to that required in pleadings, &c. yet it must in substance be an answer to the whole writ (*x*), and must be positive, not equivocal or evasive; for instance, a panel with nine names or less than required is bad (*y*); or *nulla bona*, or *non est inventus prout ei constare poterit* would be bad for uncertainty, he should return *nulla bona* or *non est inventus* directly (*z*). In replevin, if the Sheriff returns that he could not deliver the goods "*quia visum inde habere non potuit*," the return is bad for uncertainty, because he does not say that he came to the place (*a*): again, upon an *habere facias seisinam*, a return that the party *non prosecutus est breve*, is bad for uncertainty (*b*). So a Sheriff's return upon an *extendi facias*, that he has delivered such land, without saying that there is no other land, is bad (*c*); so a return to a *latitat*, that the defendant was found insane and so ill that he could not be moved was considered defective, for omitting to state that he continued so until the return of the writ (*d*); so to a *fi. fa.*, returnable *Oct. Mich.*, a return that the defendant had no goods at *Mich.* is bad, for *non constat* but that defendant had goods at *Old Mich.* (*e*)

Must not
contradict
former
returns.

Again, a return must not in *general* contradict his own former return, or that of his predecessor in office; nor falsify the writ or the record: nor be against the confession of the party (*f*).

Insufficient
returns,
how aided.

Insufficient returns are aided by appearance (*g*); or they may be amended by the Court (*h*), even after an attachment granted against the Sheriff for not bringing in the body, and *semble*, at any time; but if the previous return be substantially correct, the Court will not grant an amendment (*i*).

How far

The return of a Sheriff is of such high regard that generally

(*x*) Bro. Ret. 47; *Eyres v. Taunton*, Cro. Car. 295; *Taste v. Haynes*, Sir W. Jones, 357; *Rex v. Sheriff of Middlesex*, 1 Marsh. 344.

(*y*) 2 Roll. 461, c. 2.

(*z*) Vin. Abr. Ret. L.

(*a*) Vin. Abr. *suprà*.

(*b*) *Ibid.*; and Roll. Abr. Return (*Z*).

(*c*) 1 Browl. 37.

(*d*) *Cavenagh v. Collett*, 4 B. & A. 279.

(*e*) *Palmer v. Potter*, Cro. Eliz. 512.

(*f*) Vin. Abr. Ret. (F. G.); *Moore v. Watts*, 2 Rep. 581; see also Cro. Jac. 323.

(*g*) Vin. Abr. Ret. (W.)

(*h*) Dalt. 189; *Fitz. Amendment*, 40; *Cavenagh v. Collett*, 4 B. & A. 279; *Rex v. Sheriff of Monmouth*, 1 Marsh. 344; *Rex v. Sheriff of Wilts*, 8 Moore, 518.

(*i*) *Ibbotson v. Tindal*, 1 Bing. 156.

no averment shall be admitted against it (*k*); but when a man's life or inheritance is in jeopardy, the return is not conclusive; as if *A.* be outlawed for felony, he may say that he tendered surety before the fifth county court (*l*). The principle deducible from the authorities seems to be, that in the same action the return is conclusive, but that in any other action, or in an action against the Sheriff, it may be shown that such return is false (*m*): or in the same action it may be averred that the person making the return is not Sheriff (*n*). The return of a *devastavit* is not conclusive against an executor (*o*); and where the Sheriff returns that the defendant is dead, the return is not conclusive (*p*). When third parties are concerned the return is *prima facie* evidence of the facts therein stated (*q*).

conclusive
on the
parties.

The Sheriff generally speaking is concluded by his own return; but where he said in his return that the goods seized were *C.*'s, (*C.* having then a defeasible title, but which was afterwards defeated by relation to a prior act of bankruptcy,) it was holden that he might afterwards show more facts, and thereby in effect that they are not the goods of *C.* (*r*), for he acted upon the best information he could obtain at the time, and made his return accordingly; such is the reason assigned by the Court: but no general rule seems deducible from this case: some weight (besides other peculiar points in the case) seems to have been attached to the fact of the plaintiff's notice of *C.*'s insolvency at the time the writ was issued to the defendant (the Sheriff): nor is it easy to see that the position is in anywise elucidated by the preceding case in *East's Reports* (*s*).

How far
conclusive
on the Sher-
riff or his
officers.

The Court will, in favour of the Sheriff, take his return as made when *actually* made, and not at the return of the writ (*t*).

When re-
turn con-
sidered as
made.

A Sheriff's officer, for the purposes of his own justification, is not concluded by a false return of the Sheriff (*u*).

How far
Sheriff's
officer con-
cluded by
the return.

(*k*) Kitch. 280.

(*l*) 2 Roll. 462, l. 15; Dalt 189,

(*m*) Dalt. 189—192; Vin. Abr. Ret. (O.)

(*n*) *Arundel v. Arundel*, Yelv. Rep. 34.

(*o*) *Mounson v. Bourne*, Cro. Car. 519—528.

(*p*) Vin. Abr. Ret. (O.)

(*q*) *Gyfford v. Woodgate*, 11 East Rep. 297.

(*r*) *Brydges v. Walford*, 6 M. & S. 42.

(*s*) *Clutterbuck v. Jones*, 15 East, 78.

(*t*) Lord Henl. Bank. 340.

(*u*) *Parker v. Mosse*, Cro. Eliz. 181.

How far a bailiff of a liberty.

Whether the bailiff of a liberty is concluded by a Sheriff's return is not quite clear: the better opinion seems to be that he is, and that his remedy is over against the Sheriff (*x*).

Proceeding when there is no return or an insufficient one.

Where no return or an insufficient return is made, (for an insufficient return is as no return (*y*),) the Court will grant an attachment against the Sheriff, and it seems that he would be liable to an attachment for returning an insufficient return of a bailiff of a liberty (*z*); but he is not liable to an action for making no return to a writ (*a*). On a mesne process the Sheriff may be ruled to bring in the body (*b*).

False return.

If the return of the Sheriff be false, he may be amerced (*c*), or an action on the case at common law may be maintained against him by the party aggrieved (*d*).

By action.

An action is the proper mode of trying the truth or falsity of a return. The Court will not do so on a motion to set aside the proceedings (*e*).

Right of action, how and when waived.

The plaintiff waives his right of action for false return by accepting money under the return (*f*); and when the Sheriff returned "*nulla bona*," after satisfying the landlord's claim for rent and the taxes, and the plaintiff assented to his quitting possession of the premises, and sued out a ca. sa., it was holden that he had waived his right of action for a false return to the fi. fa., however unfounded the claim for rent might turn out to have been (*g*); but an action lies against him for a false return to a fi. fa., notwithstanding the plaintiff, before commencing the suit, has charged the original defendant in execution (*h*). An executor may maintain an action on the case for a false return to final process (*i*).

Declaration.

The declaration for a false return of *nulla bona* to a fi. fa.

(*x*) *Shaw v. Simpson*, 1 Ld. Raym. 184.

(*y*) Dalt. 189; Fitz. Ret. 63; Vin. Abr. Ret.

(*z*) Roll. Abr. Ret. (M.) 1, 2.

(*a*) 2 Inst. 452; *Morland v. Leigh*, 1 Stark. Rep. 388.

(*b*) *Rex v. Sheriff of Middlesex*, 1 B. & A. 190.

(*c*) 28 Edw. 1, c. 16; Com. Dig. Ret. (E. 2.)

(*d*) *Ibid.*; 2 Inst. 452; 4 Mod. Rep. 404.

(*e*) *Barn v. Satchwell*, 2 Str. 813.

(*f*) *Beynon v. Garrat*, 1 Car. & P. 154.

(*g*) R. & M. C. N. R. 300.

(*h*) *Wordall v. Smith*, 1 Camp. 332.

(*i*) 4 Mod. 403; 12 Mod. 71.

states (the *venue* being transitory) the judgment, issuing of writ, indorsement of writ, delivery to the defendant, the levy, and breach thus (k): "Yet the defendant, so being such Sheriff of the said county of R. aforesaid, not regarding his duty as such Sheriff, but contriving, &c., had not the said monies so levied as aforesaid, or any part thereof, before our said lady the Queen [or if in C. P. "before the justices of the bench"] at Westminster aforesaid, according to the exigency of the said writ, and of the said indorsement so made thereon as aforesaid, but therein wholly failed and made default, nor hath he paid the said sum of £ , or any part thereof, to the plaintiff; and the now defendant, after the said levy, to wit, on, &c., falsely and deceitfully returned to the said Court of our said lady the Queen, upon the said writ, that the said E. F. had not any goods or chattels within his bailiwick, whereof he could cause to be levied the debt and damages aforesaid, or any part thereof," &c.

With regard to the matters of inducement, (when specially denied, and therefore in issue,) enough may be collected from preceding observations (l): but as regards the general plea of "*not guilty*," from its great practical importance it seems prudent to repeat as often as possible, the rule from which its present effect and extent is derived, and by which its application in practice must be now tested by the pleader. The rule states that "in actions for an escape, it will operate as a denial of the neglect or default of the Sheriff or his officers, but not of the debt, judgment or preliminary proceedings." It becomes then material to inquire, what is the neglect or default alleged in the preceding precedent within the meaning of the rule. In two recent cases this point has undergone great consideration and discussion before the barons of the exchequer. In *Wright v. Lainson* (m) the declaration was *verbatim* as the one set forth above; the breach of duty alleged consisting of two parts, first, his not having the money ready; and, secondly, his making the return alleged; there was the simple plea of "*not guilty*;" and the defendant

Pleas.

General
issue, pre-
sent effect
of.

(k) For not levying and returning falsely, see *Lewis v. Alcock*, 3 M. & W. 188. The two counts may be inserted in the same declaration consistently with the Pleading Rules of Hil. 4 Will. 4: other counts for the officer's misconduct, as for not selling

within a reasonable time after seizure *Jacobs v. Humphreys*, 2 Cr. & M. 413; *Acreton v. Davis*, 9 Bing. 740; or for selling improperly, *Phillips v. Bacon*, 9 East, 298, may be added.

(l) *Ante*, p. 367.

(m) 2 M. & W. 739.

(the Sheriff) sought to give in evidence under it that they had not committed any breach of duty, for that they had not levied on the goods of the defendant in the original action, he having become a bankrupt; in other words, it was contended that the *quality* of the return—its truth or falsehood—was in issue upon this plea; but it was holden that the only matter in issue upon the plea was the fact of the Sheriff having the money in his custody, and his making such return as was alleged in the declaration, namely, the return of *nulla bona*, and this is recognized and confirmed by the more recent decision of *Lewis v. Alcock*(^a); in that case the inducement, which pointed to the duty of the Sheriff, was, that the writ was delivered to him, and that there were goods of the debtor within his bailiwick, whereupon his duty to seize them arose; then the breach was, that he did not use due diligence to make the levy, and that he returned *nulla bona*. There was the simple plea of not guilty, and under it the Sheriff wished to give in evidence that *G.* the debtor, against whom the execution issued, had no goods, (he having transferred them by bill of sale to one *L.*,) and therefore that the return of *nulla bona* was true, and that consequently there was no breach of duty; but it was holden that the question could not be raised under this plea; *Alderson, B.* observing, that “the *falsehood* of the return is the conclusion of law, if the facts stated in the inducement are true: not guilty puts that fact in issue, which is wrongful, if the facts stated in the inducement are true;” from this cursory review of the rule, and its judicial construction, it will, it is submitted, be clear what is the true effect and extent of the general plea of not guilty as at present restricted, and also (which perhaps is of equal practical magnitude) how the quality of the Sheriff’s return, that is, its truth or falsehood, is to be raised in issue on the record; the *falsehood* of the return is the conclusion of law, (as before observed,) *if the facts stated in the inducement are true*. In *Wright v. Lainson* then the defendant (the Sheriff) ought to have simply denied that part of the inducement which states “the seizing and taking in execution *divers goods and chattels of the said J. Hayes*,” and in *Lewis v. Alcock* the allegation of “*divers goods and chattels of the said H. Gompertz*, being within the defendant’s bailiwick, whereof,” &c. In the one case the bankruptcy, before the execution of

(^a) 3 Mee. & W. 188.

the *fi. fa.*, in the other the validity of the bill of sale, would have been directly in issue, and the property of the goods seized would have been settled thereon: upon the affirmative or negative decision of which depended the Sheriff's breach or no breach of duty, as a necessary conclusion of law; and by parity of reasoning, in case for a false return on mesne process of "*non est inventus*," the plea of not guilty would simply put in issue the fact of making the return alleged, that is, that the said *E. F.* was not found in the bailiwick of the defendant, and that the truth or falsehood of the return, if intended to be disputed, must be raised by a denial of the inducement.

If in issue, the plaintiff must show that the party had goods within the bailiwick when the writ was delivered, of which the Sheriff had notice, or might, by using due diligence, have had notice (*o*). When the *fi. fa.* was alleged to be against the goods of *A.* and *B.*, and the proof was that they were the goods of *A.* only, the evidence was deemed sufficient (*p*). When the Sheriff defends his return of *nulla bona* on the ground that the debtor was the domestic servant of an ambassador, the plaintiff may show that the appointment was fraudulent (*q*), or that the assignment of the goods before execution was fraudulent (*r*); or (*s*) that a prior judgment was fraudulent (the Sheriff indemnified or not indemnified.) If properly raised on the record, the Sheriff may show that the debtor has become bankrupt, and that a *fiat* has issued against him (*t*). The bankruptcy must be regularly proved. If the Sheriff can show that the plaintiff assented to his withdrawing on a claim made for rent and taxes, this will afford him a good defence, even though no rent or taxes were due (*u*): so the defendant must show that he paid the money levied to the landlord, under 8 Anne, c. 14, for arrears of rent; the onus of proving that the rent was in arrear lies upon the Sheriff, but slight evidence suffices (*x*). The Sheriff may show that the judgment on which the writ issued was frau-

Special
pleas and
evidence.

(*o*) *Bradley v. Wyndham*, 1 Wils. 44.

(*p*) *Jones v. Clayton*, 4 M. & S. 349.

(*q*) *Delvalle v. Plomer*, 3 Camp. 47.

(*r*) *Devey v. Bayntun*, 6 East's Rep. 257.

(*s*) *Wormall v. Young*, 5 B. & C. 661.

(*t*) B. N. P. 41; and see *Dowden v. Fowle*, 4 Camp. 38.

(*u*) *Stuart v. Whittaker*, 1 R. & M. 310.

(*x*) *Kightley v. Birch*, 3 Camp. 521.

dulent and void (y). He cannot give in evidence, even in mitigation of damages, an inquisition held by him to inquire into the property of the goods (z). A person who has taken the goods out of the Sheriff's hands, in this action is competent to prove his own property in them, as the Sheriff cannot, after a return of *nulla bona*, maintain an action against him, being precluded by his return disclaiming all interest in the goods (a), and the assistant to a Sheriff's officer, who has been left in possession under an execution, is a competent witness for the Sheriff (b).

SECTION XI.

FOR TAKING INSUFFICIENT PLEDGES IN REPLEVIN (a).

Pledges to prosecute and pledges pro ret. hab. must be taken.

Before the Sheriff or his deputy can replevy either upon writ or application he must, as already observed (b), take pledges. By the common law, which still governs distresses *damage feasant*, it is still necessary that, first, pledges for the prosecution, which are merely nominal; and, secondly, pledges pro ret. hab. be taken. In Co. Litt. 145 b, it is laid down, that the Sheriff ought to take two kinds of pledges, one by the common law, namely, pledges to prosecute; and another by the statute of Westminster 2, c. 2, s. 3, pledges to return the goods. And the statute of 11 Geo. 2, c. 19, (in cases of *rent*), requires him to take *both*, with this difference only, that it gives the penalty for not prosecuting to the defendant, which at common law belonged to the Queen (c).

Nature of pledges.

Pledges (*plegii*) are persons becoming surety, and not money or goods of any kind taken as a pawn; the proper term for that would be *latinici vadium*; and if the Sheriff takes money or goods, he will be liable to an action for so doing. The term

(y) *Penn v. Scholey*, 5 Esp. 243; and see *Tyler v. Leeds*, 2 Stark. Rep. 221.

(z) *Glossop v. Pole*, 3 M. & S. 175.

(a) *Thomas v. Pearce*, 5 Price, 547; *Ward v. Wilkinson*, 4 B. & A. 410; *Bland v. Ardley*, 2 N. R. 331.

(b) *Clark v. Lucas*, 1 Car. & Payne, 156; R. & M. 32.

(a) For not taking a replevin bond

or for losing the bond, an action will equally lie, for precedents and authorities *vide Perreau v. Bevan*, 5 B. & C. 284; 2 Ch. Pl. 526 a; 2 Saund. on Pl. & Evid. 773.

(b) *Ante*, p. 81.

(c) *Perreau v. Bevan*, 5 B. & Cr. 284; 8 D. & Ryl. 72; and see *Yeo v. Lethbridge*, 4 Term Rep. 435.

plegii or pledges is in the plural number, yet in distresses for *damage feasant*, if one be found sufficient, the Sheriff has discharged his duty (*d*); but in distresses for *rent*, if either surety is insufficient at the time they are taken, the Sheriff is liable (*e*); in the one case there is no obligation on the Sheriff to take a replevin bond with *two* sureties; in the other there is.

Number in distresses at common law.

In distresses by statute law.

Pledges must be sufficient in law as well as in estate, for if they be poor in estate or insufficient in law, as within age, women covert, outlawed, persons politic or bodies corporate, the Sheriff must answer it; but if sufficient at the time they are taken, and are rendered insufficient afterwards, the Sheriff is excused (*f*).

Sufficiency of pledges.

What degree or knowledge of or inquiry into the circumstances of sureties is required of the Sheriff, have been a fertile source of litigation; the rule, however, is now clear, that he must exercise *a reasonable discretion and caution in receiving them*; whether he has done so or not is a question for the jury in each case (*g*); and the law cannot be laid down with more particularity.

What degree of inquiry into their sufficiency is required of the Sheriff.

In most cases of misbehaviour by the Sheriff or his officers in relation to replevin, the Court will attach him (*h*), but for taking no bond, or one with insufficient pledges, the Court will not grant an attachment, for as the taking of the bond is directed by act of parliament and not by the Court, the neglect to do so is not a contempt of Court (*i*). The party aggrieved, therefore, is left to proceed against the Sheriff by action on the case (*k*).

Form of action.

This action may be maintained after the defendant in replevin has taken an assignment of the replevin bond and sued both principal and sureties thereon, for the Sheriff is not discharged by the defendant in replevin proceeding on the bond (*l*).

(*d*) *Hucker v. Gordon*, 1 C. & M. 58.

(*e*) *Scott v. Waithman*, 3 Stark. Rep. 168.

(*f*) *Dalton*, 434; Co. Litt. 145; 2 Inst. 340; 10 Co. 102.

(*g*) *Scott v. Waithman*, 3 Stark. Rep. 168; *Jeffery v. Bastard*, 4 Ad. & Ellis Rep. 329, and cases cited; vide also "Pleas of due and proper

and reasonable inquiry into the circumstances," &c. *ibid*.

(*h*) Bac. Abr. Repl. (C.)

(*i*) *Res v. Lewis*, 2 Term Rep. 617.

(*k*) 1 Saund. 195 b; 2 Hen. Bl. 36, 547; 4 T. R. 433; 2 Sel. Pr. 175; Cro. Car. 446; 16 Vin. Abr. 399; *Jersyman v. Gildart*, 1 N. R. 292.

(*l*) 1 Saund. 195 n.

And if the defendant in replevin elects to proceed on the statute, 17 Car. 2, c. 7, he is not confined to his execution under that statute, but may sue the sureties or the Sheriff(m).

Time of
commencing
action.

As to the proper time for commencing the action, there is a distinction between cases where the sureties are taken on distresses at common law and on distresses not at common law; for example, where the distress was upon cattle *damage feasant*, it was holden, that no action could be brought until *after* a ret. hab. was issued, and a return of elongata thereon (n). From the case of *Perreau v. Bevan* (o), the general impression seemed to have been that a retorno habendo was not material in any case, but when it was cited, Bugby said, "in that case the avowant had proceeded under the 17 Car. 2, c. 7, and the bond there was of a very different description; that was a bond under the 11 Geo. 2, c. 19, and therefore conditioned for prosecuting the suit with effect, that is, success, and accordingly was forfeited immediately on the plaintiff below being non-prossed; but here the avowant would, at common law, be entitled only to a judgment awarding a return of the cattle; and the Sheriff, by the statute of Westminster 2, (13 Edw. 1, c. 2,) was directed to take pledges to secure such return, who would not have been liable without a ret. hab. and a return of elongata thereon, and therefore the Sheriff cannot be liable at an earlier stage of the proceedings."

Parties to
action.

The party entitled to an assignment of the bond is the proper person to bring the action, that is, the avowant; or where there is no avowant on the record, the person making conusance (p).

The declaration states the taking, replevy, the levying plaint, judgment against plaintiff in replevin, the issuing of the writ of ret. hab., and return of *elongata* thereon (q), of the Sheriff's duty to take bond with sufficient sureties, and defendant's neglect of duty, thus:—

Declara-
tion.

"Nevertheless the now defendant, so being such Sheriff as aforesaid, not regarding, &c. but contriving, &c. did not nor would, before his

(m) *Perreau v. Bevan*, 5 B. & C. 284; 8 D. & R. 72.

(n) *Hucker v. Gordon*, 1 C. & M. 67.

(o) 5 B. & Cr. 284; 8 D. & R. 72.

(p) *Page v. Eamer*, 1 B. & L. 378; *vide Richards v. Acton*, 2 W. Bl. 1220.

(q) *Hucker v. Gordon*, 3 Tyr. 107.

making deliverance of the said distress to the said *E. F.* as aforesaid, take from the said *E. F.* and two responsible persons as sureties as aforesaid, such a bond as aforesaid, conditioned as aforesaid, but wrongfully and injuriously wholly omitted and neglected so to do: and on the contrary, the defendant wrongfully and unjustly, before the replevying and delivery of the said goods and chattels, to wit, on, &c. did take, in the name of the now defendant, as such Sheriffs as aforesaid, of the said *E. F.* and two other persons, to wit, *A. B.* and *C. D.*, a certain bond, conditioned, &c. Nevertheless the now plaintiff saith, that the said *A. B.* and *C. D.* so taken as sureties as aforesaid, at the time of their becoming pledges and sureties in that behalf as aforesaid, were not good, able and sufficient or responsible sureties for prosecuting, &c.; but the said *A. B.* and *C. D.*, at the time of their becoming such sureties as aforesaid, and the said *E. F.* (r), were and each of them was and ever since hath been and still are wholly insufficient for that purpose, nor have the said goods and chattels, or any or either of them, or any part thereof, as yet been returned to the plaintiff, nor have the said arrears of rent or any part thereof, been as yet paid or satisfied to the plaintiff, nor hath the said judgment been in any way satisfied, nor hath the said *E. F.* hitherto answered to the plaintiff for the value of the said goods and chattels so distrained as aforesaid, or any or either of them, or any part thereof: by means whereof, &c."

Upon the effect of the general plea of "*not guilty*" to this declaration, no question seems as yet to have arisen in our Courts, but on principle it would seem that the sufficiency or insufficiency of the sureties is not put in issue by this plea, but simply the taking the bond as alleged, and that if the former proposition be intended to be brought in question, the averments of their insufficiency should be denied; and this view of its effect seems countenanced, if not justified, by the cases of *Wright v. Lainson* (s) and *Lewis v. Alcock* (t), though not perhaps parallel cases. At all events, until the point be sanctioned by judicial authority, the pleader would not do well to trust to that plea alone, if the question of sufficiency was the point to be raised for the jury.

Effect of
general
issue.

The replevying (if in issue) may be shown by the original precept to deliver; when it remains in the possession of the bailiff he should be served with a subpoena *duces tecum*, but if it has been returned to the Sheriff, he should be served with a notice to produce it, to let in secondary evidence of its contents.

Evidence if
the replevying be in
issue.

(r) A count stating that the Sheriff, instead of taking a bond from the plaintiff in replevin and two sufficient sureties, took a bond from the plaintiff in replevin and one surety, who was

alleged to be insufficient, is bad for not alleging that the plaintiff in replevin was insufficient; *ibid.*

(s) *Ante*, p. 402.

(t) *Ante*, p. 402.

The connection between the Sheriff and the bailiff must also be established by the evidence already laid down.

If the taking
of the bond
be in issue.

If the taking of the bond be in issue, the defendant should be served with a notice to produce the bond (if in his possession), and the service of such notice proved; when it was produced under such notice, and it appeared that the original bond had been shown to the plaintiff's agent, and a copy of it delivered to him, it was held unnecessary to call the subscribing witness; and that as against the Sheriff it must be taken to be a valid bond (*u*). So when it was proved that the Sheriff had assigned the bond to the plaintiff, it was holden unnecessary to prove the execution by the sureties; for that as against the Sheriff, proof of the assignment by him to the plaintiff was sufficient (*x*).

Sureties
good wit-
nesses to
prove their
sufficiency.
Amount of
damages.

The sureties themselves are competent witnesses to prove whether they were sufficient or not (*y*).

The Sheriff in this action is liable to the amount of the penalty in the bond; that is, double the value of the goods distrained, and no farther (*z*).

SECTION XII.

TRESPASS.

Acts in a
judicial and
ministerial
character.

For what is done in his *judicial* character, as before observed, no action will lie against him, though it were done maliciously; in such case, however, he might be punished by criminal information or indictment (*a*), but for torts committed in his *ministerial* character an action will lie.

When tres-
pass lies.

In trespass he is in general liable, even though there was no wrongful intent in committing the tort; as if by mistake he take the goods of a wrong person, the intent of a wrongdoer being immaterial, except as regards the amount of damages (*b*), but he

(*u*) *Scott v. Waithman*, 3 Stark. Rep. 168.

(*x*) *Barnes v. Lucas*, R. & M. 266.

(*y*) *Saund.* 196 g; *Hindle v. Blades*, 5 Taunt. 225.

(*z*) *Evans v. Brander*, 2 Hen. Bl. 47; *Paul v. Goodluck*, 2 Bing. N.

R. 224; 1 Hodges, 370; 2 Scott's Rep. 363; and see *Hunt v. Round*, 2 Dowl. P. C. 561.

(*a*) *Dicas v. Lord Brougham*, 1 M. & Rob. 309; 6 Car. & P. 249.

(*b*) 2 Stark. Rep. 213; 3 Wils. 309; 3 East, 599, 601.

cannot be made a trespasser by relation, for although a fiction of law may give a right, it cannot create a wrong; thus if a Sheriff, after a secret act of bankruptcy committed by *A.*, seize his goods under an execution against him, he cannot be sued by the assignees in trespass, but only in trover (*c*). So when the process of a superior or inferior court has been *misapplied*, as if *A.* or his property be taken upon process against *B.*; and trespass is the proper remedy where there is a misnomer in the process which has not been waived, though it be executed on the person or goods of the party against whom it was in fact intended to be issued; or if process be *abused*, as if he break open an outer door, or arrest out of the bailiwick or after the return day of the writ (*d*), or execute a *fi. fa.* after notice of allowance of a writ of error, or detain a party on a *ca. sa.* after he tenders the debt and costs, or retake one after a voluntary escape on a *ca. sa.* (*e*), or seize under a *fi. fa.* for fixtures of the defendant who is a freeholder, for he thereby becomes a trespasser *ab initio*; but if the act complained of consists of a mere nonfeazance, as if he improperly refuse bail or to act when he should do so, an action on the case, and not of trespass, is the form to be adopted (*f*). When process is *irregular* merely, no action for false imprisonment can be maintained until that process is set aside (*g*).

The declaration (in the form of which few difficulties can well arise) will necessarily depend upon the nature of the act of trespass, whether to the person, to personal property, or to real property (*h*). Declara-
tion.

The plea of "*not guilty*" puts in issue the fact of the defendant having committed the act complained of, and nothing more; the plea therefore is proper in trespass to *person*, if the defendant committed no assault, battery or imprisonment; in trespass to *personal* property, if the defendant did not take, &c.; and in trespass to *real* property the fact of the trespass is alleged, but Pleas.

(*c*) *Smith v. Milles*, 1 T. R. 480; *Balme v. Hutton*, 9 Bing. Rep. 471; *Carlisle v. Garland*, 3 M. & W. 152; *Groves v. Cowham*, 10 Bing. 5.

(*d*) *Belshaw v. Marshall*, 1 Nev. & M. 689.

(*e*) *Atkinson v. Matteson*, 2 T. R. 172.

(*f*) *Storland v. Govett*, 5 B. & C. 490; *Six Carpenters case*, 8 Co. 290.

(*g*) *Riddell v. Pakeman*, 2 C. M. & R. 33.

(*h*) *Phillips v. Howgate*, 5 B. & A. 220; *Young v. Beck*, 1 C. M. & R. 400.

the possessory title of the plaintiff is not in issue, which must be specially denied if intended to be disputed: and all matters in confession and avoidance must be specially pleaded.

Pleas by
Sheriff justifying
arrest under
capias.

In justification under process the usual pleas are the following:

1st. Not guilty.

2nd. " And for a further plea in this behalf (i) [as to the making the said assault, &c.] the defendant saith (actio non), because he saith that before the said time when, &c. in the declaration mentioned, to wit, on, &c. a certain writ of our lady the Queen, called a *capias*, was issued out of the Court of our lady the Queen, before the Queen herself, directed to the then Sheriff of , by which said writ our lady the Queen commanded the said Sheriff that he should omit not by reason of any liberty in his bailiwick, &c. [setting out remainder of *capias verbatim except memoranda*], which said writ was then duly indorsed for bail for £ ; and which said writ so indorsed for bail as aforesaid, afterwards, to wit, on, &c. was delivered (k) to the defendant, who then and from thenceforth until and at and after eight days after the execution of the said writ upon the now plaintiff as hereinafter mentioned, was Sheriff of the said county of , to be executed in due form of law: and the defendant, by virtue of the said writ, as such Sheriff as aforesaid, afterwards, and before the time appointed for the return of the said writ, to wit, at the said time when, &c. in the declaration mentioned, and within his bailiwick, as such Sheriff, took and arrested the plaintiff by his body, and kept and detained him in his custody at the suit of the said E. F. for the cause aforesaid for the space of time in the declaration mentioned, as he lawfully might for the cause aforesaid (l); and the defendant further saith, that afterwards and at the return of the said writ, to wit, on, &c. he the defendant duly returned the said writ to the said Court of our lady the Queen, before the Queen herself, and then returned thereon that by virtue thereof he the defendant had taken the plaintiff, whose body he had ready as by the said writ he was commanded, as by the said writ and the said return thereof remaining of record in the said Court more fully appears: and this, &c. verify, &c. (m)

(i) The recital of the trespasses intended to be justified must depend on the statements in the declaration; 1 Saund. 296—298, n.; *Beck v. Young*, 1 C. M. & R. 448; *Reddell v. Pakeman*, 3 Dowl. 714; 1 Gale, 104; how to plead in an inferior court; Cowp. 18; see also 2 Ch. Pl. 1000; by a serjeant at mace under process executed in London; 9 Wentw. 331. See another plea, 3 Chit. Pl. 1006; *Phillips v. Howgate*, 5 B. & Ad. 220.

(k) This allegation is not necessary but usual; *Green v. Jones*, 1 Saund. 298.

(l) The arrest only is justified in this precedent, if a battery be justified

the cause thereof must be set out on the record; see 2 Chit. Pl. 993; 1 Saund. 296; and ante, p. 417; *Phillips v. Howgate*, 5 B. & A. 220. See a plea of justification in "*Trover*," post; and *Samuel v. Duke*, 3 Mees. & Wels. 630.

(m) The Sheriff or officer to whom *mesne* process is directed must allege a return of *mesne* process, but the bailiff who has a warrant or any person who acts in his aid need not. When the Sheriff justifies under process in execution the return need not be shown, unless some ulterior process is to be resorted to to complete the justification; *Clearty v. Barnes*, 10 East's Rep. 81, and cases cited.

When a process or warrant is stated in the plea the replication "*de injurid*" cannot be replied; plaintiff must either deny the issuing of the writ or warrant, or that the trespasses were committed in due execution thereof, showing why and sometimes without showing why (n); if the plea justifies a battery, because plaintiff attempted a rescue, the plaintiff may reply that defendant beat him more than was necessary (o).

Replication.

When the bailiff, in an action against him for breaking and entering plaintiff's dwelling-house, pleaded that he entered under a writ of *fi. fa.* and a warrant, to which the plaintiff replied that before the writ and warrant were fully executed defendant exacted more than the sum he was entitled to levy; the replication was holden bad on demurrer, as the act complained of—the extortion—was not such an act of trespass as would make the Sheriff a trespasser *ab initio*.

The effect of the general issue and the evidence bearing upon it.—The writ, arrest, &c. and the evidence to support the allegations having been already considered, it would be to little or no use to accumulate further comment thereon.

Evidence.

The damages recoverable in this action are such as the plaintiff can prove that he has *actually* sustained.

Damages.

SECTION XIII.

TROVER.

As before observed the Sheriff must at his peril execute the writ on the property of the person therein named, and upon that of no other individual; if, therefore, goods have ceased to be the property of that party, he is liable to an action at law if he seizes them, although not cognizant of the change of property: upon this principle it is considered that a Sheriff, who seizes after an act of bankruptcy, without notice, is liable in an action of *trover* at the suit of the assignees.

Where property has ceased to be the property of the defendant.

That he could not be made a *trespasser* by relation, (being a public officer,) was clearly settled; but that he was liable in

Liable in trover but not trespass.

(n) *Vide* 2 Ch. Pl. 1129, n. (e).

(o) See also *Young v. Beck*, 1 C. M. & R. 400.

trover (a) was equally admitted as a clear rule in all the text books of writers on bankrupt law; acted upon by all practisers in their advice to clients, and confirmed by some of the ablest men that have ever adorned the judicial seat from Lord Mansfield down to the present day. But in Michaelmas term, 1831, the case of *Balme v. Hutton* (b) came before the barons of the exchequer, by whom, in one of the most elaborate judgments on record, it was adjudged that in such a case he was not liable in *trover*; but this judgment was carried by writ of error into the Exchequer Chamber, when it was reversed (c). Subsequently, the case of *Carlisle v. Garland* (d) was argued in the Exchequer Chamber, but the judges were equally divided on the main point, and by the House of Lords the judgment of the Court below was affirmed by a majority of the judges, (Lord Denman, Vaughan and Bolland, dissentientibus) (e), thereby deciding that a Sheriff, who seizes and sells the goods of a bankrupt under a *fi. fa.*, before fiat, but after an act of bankruptcy, without notice of the act of bankruptcy, is liable in *trover* to the assignees; so that *trover* will lie against him, whether he have notice of the act of bankruptcy or not (f).

What right he has to take goods, &c. of one not subject to the bankrupt laws, when the transfer took place after the *delivery* of the writ to him, has already been fully considered (g).

These observations are made with a view of showing his duties in cases of bankruptcy or insolvency—when he should proceed to sell and when he should not—to whom he should turn over the proceeds, to the execution creditor or to the assignees—and also how the property of goods and chattels of persons not within the reach of the bankrupt laws is affected by a delivery of the writ to him; a proper consideration of which will always guide him in his option of calling for an indemnity, or applying to the

(a) *Cooper v. Chitty*, 1 Burr. 36; *Hitchin v. Campbell*, 3 Wils. 309; *Lasurus v. Waithman*, 5 Moore, 313; *Potter v. Starkie*, 4 M. & S. 260; *Wyatt v. Blades*, 3 Camp. 396; *Lee v. Lopes*, 15 East, 239; *Price v. Helyar*, 4 Bing. 527; *Carlisle v. Garland*, 7 Bing. 298; *Dillon v. Lumley*, 2 B. & Ad. 131; *à contrâ*, *Bailey v. Buning*, 1 Lev. 173; 1 Sid. 271; *Letchmere v. Thorogood*, 3 Mod. 236; *Cole v. Davies*, Ld. Raym. 724.

(b) 2 C. & Jerv. 20; 2 Tyrw. 17.

(c) 9 Bing. 471.

(d) 10 Bing. 452; 3 Tyrw. 705; 4 Scott, 587—717; 3 M. & W. 152.

(e) The maxim "*ignorantia juris neminem excusat*" seems a strange maxim after cases like this.

(f) 1 Mont. & Ayr. B. L. 251; Henl. 338; and *ante*, p. 330, where executions in the case of bankruptcy are fully considered.

(g) *Ante*, 329.

Court under the Interpleader Act, as well as protect him from expensive law suits.

As the pleadings bear so strong an analogy to those in trespass, it is proposed briefly to refer to the effect of the general plea of "*not guilty*," and the few decisions bearing upon it. "In an action for converting the plaintiff's goods, the plea will operate as a denial of the conversion only, and not the plaintiff's title to the goods:" that is, in denial of the conversion *in fact* only, and not of its legality or illegality. If the defendant pleads specially any circumstances which show that no conversion has *in fact* taken place, the plea will be bad on special demurrer, as amounting to the general issue (*h*). If the property in the goods converted had ceased at the time by any act of his own, or by act and operation of law, to be the property of the plaintiff or otherwise intended to be questioned, a plea denying the property (*i*), or that the property was barred by the delivery of the writ to him as Sheriff, and therefore that he had a right to seize them, even in the hands of a *bond fide* purchaser, as in the following case (*k*).

Pleadings.

General issue.

1st plea, not guilty.

2d plea, not possessed.

3d plea, And for a further plea in this behalf, the defendants say that before and at the time of the delivery of the writ of *feri facias* to the defendants as hereinafter mentioned, and from thence and at and after the said time, when, &c., in the declaration mentioned, the defendants were Sheriff of the county of Middlesex, and that before and at the time of the delivery of the said writ of *feri facias* as hereinafter mentioned, to them as such Sheriff, the said goods and chattels in the declaration mentioned were respectively the goods and chattels of one *T. P. C.*, and not the goods and chattels of the plaintiff; and the defendants further say, that whilst the property of the said goods and chattels was legally vested in the said *T. P. C.*, to wit, on the day of , A. D. 1839, one *B. G.* sued out and prosecuted out of the Court of our lady the Queen, before the Queen herself at Westminster, a certain writ

(*h*) *Tunno v. Morris*, 2 C. M. & R. 298.

(*i*) In *Stanciffe v. Hardwicke*, 2 C. M. & R. 1, it was decided, that under the plea of "*not guilty*," the defendant might show that plaintiff has only *some* property in the goods; see also *Wright v. Laimson*, 2 M. & W. 739; *Lewis v. Alcock*, 3 M. &

W. 188; *Vernon v. Shipton*, 2 M. & W. 9.

(*k*) *Cosby v. Carroll*, not yet reported. The third plea was recorded in consequence of the judgment in *Samuel v. Duke*, *ante*, 328, *quod vide*, where a distinction is drawn by Baron Parke between the plea of "*not possessed*," and the third plea set forth in the text.

of our lady the Queen, called a writ of *fi. facias*, directed to the Sheriff of Middlesex, whereby the said Sheriff was commanded that of the goods and chattels of the said *P. C.* in the said Sheriff's bailiwick, the said Sheriff should cause to be levied £ , which said writ was afterwards and before the delivery thereof to the said Sheriff, indorsed to levy £ , besides Sheriff's poundage, officers' fees, and all other incidental expenses; and which said writ afterwards, and whilst the said *T. P. C.* was still possessed of the said goods and chattels in the declaration mentioned, as of his own property, to wit, on the day and year aforesaid, was delivered to the defendants as such Sheriff as aforesaid, to be executed in due form of law: and the defendants further say, that because the said *T. P. C.*, after the delivery of the said writ of *fi. facias* to them as such Sheriff, so to be executed as aforesaid, had fraudulently, and in order to avoid the said writ of *fi. facias*, transferred the property of the said goods and chattels to the plaintiff by private contract, and not in *market overt*, they the defendants by virtue of the said writ, and before the return thereof, to wit, at the said time when, &c. in the declaration mentioned, seized the said goods and chattels in the declaration mentioned, as they lawfully might for the cause aforesaid, which is the supposed conversion in the declaration mentioned; and this the defendants are ready to verify, &c.

SECT. XIV.

ASSUMPSIT AND DEBT.

What remedies plaintiff has against Sheriff after sale on a *fi. fa.*

A plaintiff, when he has issued and delivered a *fi. fa.* to the Sheriff, and goods are taken under it, has a fourfold remedy, either by rule of Court—by action of debt (*a*)—by account—or by assumpsit for money had and received, against him or his executor.

A mere seizure not sufficient.

A mere *seizure* will not charge the Sheriff in an action for money had and received, for, until *sale*, the execution creditor has no interest in either the goods or money, without which this action will never lie (*b*).

Sheriff's interest in goods after seizure.

After seizure, and before sale, the Sheriff has a *special* property in the goods, but the debtor has the *general* property; up to that time, therefore, the debt is not extinguished, and the judgment creditor has a security for his debt. But after sale, or payment of the money, the Sheriff becomes the debtor, and the original debt is extinguished (*c*).

(*a*) *Perkinson v. Gilford*, Cro. Car. 539; Hob. 206; *Thurston v. Mills*, 16 East, 269.

(*b*) *Thurston v. Mills*, 16 East, 269.

(*c*) *Morland v. Pellatt*, 8 B. & C. 727.

As before stated, in order to maintain money had and received, either the money or the goods (the proceeds of which are claimed by the plaintiff) must originally, or at the time of the action brought, *have belonged to the plaintiff*, and upon this principle it was holden, that if the Sheriff, after having seized goods under a *fi. fa.* at the suit of *A.*, sell them, though irregularly, under another process at the suit of and for the benefit of *B.*, this action cannot be supported by *A.* against the Sheriff (*d*).

When money had and received will lie.

Where the Sheriff in *Michaelmas* term returned to a writ of *fi. fa.* "goods in hand for want of buyers, value unknown," and no further steps were taken until *Trinity* term following; in the interim the goods were seized under an extent by the crown: held, that as the delay was permitted by the plaintiff he could not afterwards fix the Sheriff with the payment of the debt (*e*).

Sheriff cannot be fixed with the debt by the laches of the plaintiff.

Whether this action will lie against the Sheriff before the return of the process is still an open question; it seems to be maintainable (*f*), but not before the *return day* (*g*) of the writ.

The action should not be brought until after a demand of the money has been made, otherwise the Court will stay proceedings on payment of the sum levied without costs (*h*), but it is not necessary, for the maintenance of the action, to prove a demand before action brought (*i*); if, however, upon sale, money remains in his hands *beyond the debt*, the defendant must, according to an old authority, demand it of the Sheriff before action brought (*k*).

When action commenced.

Demand, when to be made.

As an act of bankruptcy overreaches all intermediate acts, so as to vest the property in the assignees from the time of the act committed, they may either affirm or disaffirm the act of any party who, after the act of bankruptcy, has converted the trader's effects into money, either by bringing an action for money had and received to their use, or by bringing trover (*l*);

By assignees of bankrupt.

(*d*) 16 East, 254, *supra*.

(*e*) *Ruston v. Hatfield*, 3 B. & A. 204; *Tomlinson v. Shynn*, 2 B. & B. 77; see also 1 Ch. Rep. 613 n.

(*f*) *Perkinson v. Gilford*, Cro. Car. 539; S. C. Sir W. Jones, 430; Roll. Abr. 598, 921; Impey, 164.

(*g*) *Morland v. Pellatt*, 8 B. & C. 727.

(*h*) *Jefferies v. Sheppard*, 3 B. & A. 696; see also 3 Camp. 347.

(*i*) *Dale v. Birch*, 3 Camp. 347.

(*k*) Noy, 59.

(*l*) *Rex v. Leith*, 2 Term Rep. 143; *Clarke v. Gilbert*, 2 Bing. N. C. 343; 8 Bing. 43.

Assumpsit
or trover,
which pre-
ferable.

but they *must* (m) adopt assumpsit if they have affirmed and recognized the wrongful sale and waived the original tort; for if they have once affirmed his acts and treated him as their agent, they cannot afterwards treat him as a wrong doer, nor can they affirm his acts in part and avoid them as to the rest; but it should be observed, that it is in general more advisable for the assignees to proceed in trover, for if the goods have been sold they may recover in trover the full value of the goods, deducting the ordinary expenses of sale, though the sale may not actually have produced more than half their worth, but in assumpsit the assignees can only recover what the party really received (n); again, as by bringing assumpsit the contract is affirmed, and they have thereby once treated the transaction as a contract of sale, they must pursue it through all its consequences, one of which is that the party buying may set off another debt owing to him (o), which cannot be done in trover (p); therefore, to avoid a plea of set off on mutual credit, as the case may be, the form *ex delicto* seems in general preferable when it can be maintained; but it should also be observed, that when the ground of action is assumpsit, declaring in tort will not render a person liable who would not have been so on his promise (q), nor will it in general avoid the consequences of a nonjoinder of a party (r).

When he
claims money
to which he is
not entitled
by law.

When a Sheriff claimed as of right, upon a warrant issued by him in the execution of his office, a larger fee than he was entitled to by law, and the attorney paid it in ignorance of the law, it was holden that the latter might maintain money had and received for the excess paid above the legal fee, or might set off the sum in an action by the Sheriff against him (s).

So when a Sheriff claims by his return to retain money to which he is not entitled, money had and received will lie (t).

Non as-
sumpsit.

Non assumpsit in this form of action "operates as a denial,

(m) *Brewer v. Sparrow*, 7 B. & Cr. 310.

(n) *Rex v. Leth*, *suprà*.

(o) *Smith v. Hodson*, 4 Term Rep. 217; 10 East, 378, 418; 16 East, 130; 1 Ch. Pl. 100.

(p) *Wilkins v. Carmichael*, 1 Dougl. 101; *Raphael v. Birdwood*, 5 Price, 604.

(q) 1 Ch. Pl. 100; and cases cited, n., 6th edit.

(r) *Ibid*.

(s) *Dew v. Parsons*, 2 B. & A. 562; 1 Ch. Rep. 295.

(t) *Longville v. Jones*, 1 Stark. Rep. 345.

both of the receipt of the money and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff;" this rule is in itself so intelligible and so easy of application that it is needless to dwell upon it, indeed it is scarcely possible to conceive a case where the special facts could be recorded without their amounting to the general issue, and none seems yet to have occurred in practice which has stood the test of a demurrer (u).

Nunquam indebitatus is not a good plea in an action of *debt founded on the Sheriff's return* to a fi. fa., for the return is parcel of the record, and *nunquam indebitatus* is no plea against a record (x); but if the Sheriff has made no return, and debt be brought against him for the money he has actually received, then *nunquam indebitatus* is a good plea; for in that case the receipt of the money for the plaintiff's use is the *foundation* of the action, and the record but matter of *inducement*; when pleaded it has the same operation as the plea of non assumpsit, before explained.

Nunquam indebitatus.

The statute of limitations is not a good plea in an action of debt, founded on the return, for the reason above assigned (y).

Statute of limitations

The amount of damages or debt recoverable herein, previous observations upon the distinction between assumpsit and trover will sufficiently elucidate.

Damages.

(u) *Solly v. Neish*, 2 Cr. M. & R. 358.

(y) *Cockram v. Welby*, 2 Mod. 212; Freem. 236.

(x) *Perkinson v. Gilford*, Cro. Car. 539; 2 Saund. 344.

CHAPTER VI.

ACTIONS BY HIGH SHERIFF.

SECTION I.

ASSUMPSIT AND DEBT.

As already stated, the Sheriff at common law has no claim which he can enforce by action, therefore if he has any claim, it must be under the provisions of some statute (a).

By the 43 Geo. 3, c. 46, " the plaintiff or plaintiffs may also levy the poundage, fees and expenses of the execution over and above the sum recovered by the judgment. Assuming, however, that the fees are not levied by virtue of this statute, a question arises what remedy the Sheriff has for recovery of them, (for to refuse to execute the writ till his fees are paid is, after payment, an indictable offence) ; on the statute of 43 Geo. 3, containing no express words as to any remedy for fees, (and, by parity of reasoning, it would be so on the recent statute of Victoria, there being no express words to that effect,) it was holden that, by implication, a right was given to the Sheriff to demand the fees mentioned in the statute ; and, consequently, that he might, as in all cases where a statute creates a debt or duty, maintain an action of debt for them (b) ; a similar construction was put upon the statute of 28 Elizabeth (c) ; his remedy then is by action of debt (d) ; or he may maintain *assumpsit* upon an express promise. There is an authority of Lord Kenyon (e) for saying, that a Sheriff's officer may, when there is an express promise, maintain an action *for fees* in his own name, but this seems to require some qualification, notwithstanding it is in some measure countenanced by a precedent of one of the most eminent lawyers of

(a) *Ante*, p. 381.

(b) Moore, 853, pl. 1166 ; Latch.
19 ; Salk. 331 ; Palm. 400.

(c) *Tyson v. Parks*, 2 Ld. Raym.

1212 ; see also 1 Salk. 209 ; 1 Rol.
598, l. 35.

(d) Mo. 468 ; Cro. Eliz. 654.

(e) *Ormerod v. Foskett*, Peake's
Add. Ca. 77.

our day, Mr. Chitty (*f*). The authorities *in banc* do not, it is submitted, go so far as the one at *nisi prius*, they merely establish this proposition, that a Sheriff's officer employed by an attorney to execute writs, may maintain an action against him, not for fees *quod fees*, but for the remuneration usually allowed on such occasions (*h*); and this is in strict accordance with the principles of law; for that *A.* should be employed by *B.*, and not entitled to a reasonable remuneration for his services, would be most unjust. The term bound bailiff is perhaps not proper, for when one who happens to be a bound bailiff is employed by the plaintiff or his attorney, he is not, in such employment, a bound bailiff, but a special bailiff, being, *pro hac vice*, the servant of the plaintiff or his attorney, as the case may be, and not the servant of the Sheriff; and his *accidentally* being a bound bailiff is a matter wholly irrelevant and unimportant.

SECTION II.

TROVER AND TRESPASS.

As any one having a *special* property in goods may support trover against a wrong-doer, so may a Sheriff for goods seized under a *fi. fa.*, provided they are at the time of the conversion in his actual possession; if he abandons possession, the property and possession revert back to the original owner (*a*). *Note.*—When the Sheriff returns “*nulla bona*,” and there is a recovery against him for his false return, that vests no property in him, but it remains vested in the party as before, and they are liable to any subsequent execution for his debt (*b*).

So he may support trespass for an injury done while he remained in actual possession.

(*f*) 2 Ch. Pl. 52, 6th edit.
 (*g*) *Foster v. Blakelock*, 5 B. & Cr.
 328; see also *Townsend v. Carpenter*,
 2 Car. & P. 118; and *Bramwell v.*
Pinnoch, 7 B. & Cr. 536.
 (*a*) 1 Ventr. 52; 6 Mod. 292; 2

Saund. 47; *Blades v. Arundale*, 1 M.
 & S. 711.
 (*b*) 2 Vern. 239.
 (*c*) 2 Saund. 47; 1 M. & S. 711;
 see 1 D. & R. 307; 2 *Id.* 755; 1 Ch.
 Pl. 170.

SECTION III.

ON SECURITIES FOR MONEY SEIZED UNDER A FI. FA.

(1 & 2 Vict. c. 110.)

It is next proposed to consider actions *by* High Sheriff, brought upon promissory notes, bills of exchange, &c., seized by him under a fi. fa. by virtue of the twelfth section of the above-mentioned statute (*a*), which enacts,

Power to
seize pro-
missory
notes, bills,
&c.

To sue for
amount se-
cured by
bills of ex-
change and
other secu-
rities.

Proviso as
to indem-
nity to
Sheriff.

"That by virtue of any writ of fieri facias to be sued out of any superior or inferior Court after the time appointed for the commencement of this Act, or any precept in pursuance thereof, the Sheriff or other officer having the execution thereof may and shall seize and take any money or bank notes (whether of the governor and company of the Bank of England, or of any other bank or bankers,) and any *cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money*, belonging to the person against whose effects such writ of fieri facias shall be sued out; and may and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized, or a sufficient part thereof, and may and shall *hold* any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, as a security or securities for the amount by such writ of fieri facias directed to be levied, or so much thereof as shall not have been otherwise levied and raised; and may sue in the name of such Sheriff or other officer for the recovery of the sum or sums secured thereby, *if and when the time of payment thereof shall have arrived*: and that the payment to such Sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty or other security, *with or without suit*, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty or other security, and such Sheriff or other officer may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied; and if, after satisfaction of the amount so to be levied, together with Sheriff's poundage and expenses, any surplus shall remain in the hands of such Sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued, *provided that no such Sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty, or other security, unless the party suing out such execution shall enter into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, the expense of such bond to be deducted out of any money to be recovered in such action.*"

(a) *Ante*, 328.

Bond of Indemnity.

KNOW ALL MEN BY THESE PRESENTS that we *G. A.* of _____, *G. P.* of _____, and *C. W.* of _____, in the county of *W.*, are held and firmly bound to Sir *G. M.*, Bart., of _____, High Sheriff of the said county, in the sum of £ _____, to be paid to the said Sir *G. M.*, Bart., or to his certain attorney, executors, administrators, or assigns, for which payment, to be well and truly made, we bind ourselves and each of us our and each of our heirs, executors, and administrators, and every of them, jointly and severally, firmly by these presents sealed with our seals, and dated this, &c.

WHEREAS the above-named Sir *G. M.*, Bart., as Sheriff of the county of _____, by virtue of her Majesty's writ of *fi. facias* to him directed, against the goods, chattels, moneys, bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, and other securities for money of one *J. B.* issued at the suit of the said *G. A.* out of her Majesty's Court of Queen's Bench, hath seized and taken in execution a certain promissory note of the said *J. B.*; and whereas the said *G. A.* hath applied to the said Sheriff and requested him to sue the maker of the said note for the recovery of the amount thereof, which the said *G. M.*, Bart., has consented to do upon being indemnified for so doing.

NOW THE CONDITION of the above-written obligation is such, that if the above-bounden *G. A.*, *G. P.*, and *C. W.*, or any of them, their or any of their heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, well and sufficiently indemnify the said Sir *G. M.*, Bart., from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof, then that the above-written obligation to be void, otherwise to stand and remain in full force, vigour, and effect.

Signed, sealed, and delivered in the presence
of me _____.

G. A. (L. s.)
G. P. (L. s.)
C. W. (L. s.)

Declaration.

In the Queen's Bench.

The _____ day of _____, A. D. 1839.
Westmorland } *A. B.*, Sheriff of the county of *W.*, (the plaintiff in this
to wit. } suit according to the form of the statute in such case
made and provided) by *J. A.*, his attorney, complains of *G. W.* the defendant in this suit, who has been summoned to answer the said *A. B.*, as Sheriff as aforesaid, in an action on promises. For that whereas the defendant on the _____ day of _____, A. D. 1839, made his promissory note in writing, and thereby promised to pay to one *J. B.* £100 three months after the date thereof, which period had elapsed before the commencement of this suit, and then delivered the said note to the said *J. B.* and promised the said *J. B.* to pay him the same according to the tenor and effect thereof: And the plaintiff further saith, that heretofore ^(b) and before the commencement of this suit, to wit, on the _____ day of _____, in the

(b) This probably according to the usual forms of pleading should have preceded, but as a *general precedent* this will be found more correct: it

is, as far as can be ascertained, the first precedent under the new statute, —*nihil simul inventum est et perfectum*!

year aforesaid, one *G. P.* in the Court of our lady the Queen, before the Queen herself, by the consideration and judgment of the same Court, recovered against the said *J. B.* a certain debt of £ , and also costs, which in and by the same Court were adjudged to the said *G. P.* and with his assent for his damages which he had sustained, as well by the occasion of the detaining of the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said *J. B.* was convicted as by the record and proceedings thereof still remaining in the same Court of our lady the Queen, before the Queen herself, at Westminster aforesaid, will more fully and at large appear: And the plaintiff further saith, that the said judgment being in full force, and the debt and damages remaining unpaid and unsatisfied, the said *G. P.* on the day of , A. D. 1839, for the obtaining of satisfaction thereof, sued and prosecuted out of the said Court of our said lady the Queen, before the Queen herself, at Westminster aforesaid, a certain writ of our said lady the Queen called a *fiery facias*, directed to the Sheriff of *W.*, by which said writ our lady the Queen commanded the said Sheriff that of the goods, chattels, money, banknotes, cheques, bills of exchange, promissory notes, bonds, specialties, and other securities for money of the said *J. B.* in the said Sheriff's bailiwick, he should cause to be levied the debt and damages aforesaid, and that he should have that money before our said lady the Queen at Westminster aforesaid immediately after the execution thereof, to render to the said *G. P.* for his debt and damages as aforesaid; and that the said Sheriff should have there then that writ, which said writ afterwards and before the delivery thereof to the plaintiff as such Sheriff as hereinafter mentioned, to wit, on the day of , in the year aforesaid, was duly indorsed with a direction for the said Sheriff to levy £ , besides Sheriff's poundage, officer's fees, and all other incidental expenses, and which said writ, so indorsed, afterwards and before the said execution thereof, to wit, on the day and year last aforesaid, was delivered to the plaintiff, who then and from thence until and at and after the execution of the said writ was, and from thence hitherto hath been, and still is Sheriff of the said county of *W.*, to be executed in due form of law, by virtue of which said writ the plaintiff, as such Sheriff as aforesaid, afterwards, to wit, on the day and year last aforesaid, and within his bailiwick, as such Sheriff, seized and took in execution the said promissory note above mentioned, of all which premises the defendant afterwards, to wit, on the day and year last aforesaid, had notice: Yet the defendant hath disregarded his promise and hath not paid the sum of £100 in the said note mentioned, or any part thereof, to the said *J. B.* before the same was so seized and taken in execution as aforesaid, or to the plaintiff as such Sheriff as aforesaid, since the same was so seized and taken in execution: To the damage of the plaintiff as Sheriff as aforesaid of £ , and thereupon according to the form of the statute in such case made and provided he brings suit, &c.

Pleas.

With regard to a defence to an action of this kind little need be said, for it is quite clear that whatever pleas might have been pleaded to an action brought upon the instrument by the original creditor may be pleaded herein; add however, that the defendant may deny any other material averment on the face of the declaration, as to the issuing of the writ, seizure, &c. &c.

Upon recovery of the amount of the security it will be seen How on reference to the twelfth section of the act(c) what the Sheriff must do with it: namely, to pay over the whole or so much as will satisfy the debt of the execution creditor, and if any surplus remains after payment of the debt, together with his poundage and expenses, it must be paid over to the party against whom such writ shall be so issued. ^{amount of security to be disposed of.}

(c) *Ante*, p. 420, 328.

CHAPTER VII.

CONSERVATOR PACIS.

UNDER this division of the Sheriff's duties, (it being of little practical importance, seldom or never being called into action,) it is proposed simply to quote the language of *Hawkins* thereon (a): "every Sheriff (says he) is a principal conservator of the peace within his county, and may, without doubt, *ex officio* award process of the peace and take surety for it. And it seems the better opinion that the surety so taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation or matter *in pais* only; for that it is taken by him by virtue of the Queen's commission, by which he is entrusted with the custody of the county, and consequently by it has an implied power of keeping the peace within such county; and it is a general rule, that whatsoever is done by virtue of the Queen's commission ought to be taken as a matter of record."

Cannot act
as a magis-
trate.

But although *virtute officii* a conservator of the peace, yet it is declared "that all and every acts to be done by any Sheriff, by authority of any commission of the peace during the time of his Sherifffick, shall be void." *Note*.—When he is out of office he may act by force of the same commission (b).

(a) 2 Hawk. P. C. c. 8. See also Dalt. c. 11.

(b) Dalt. 27.

CHAPTER VIII.

SHERIFF'S ACCOUNTS.

THE statute of 3 & 4 Will. 4, c. 99, (29th August, 1833,) is so clear and intelligible as to the time, place, and mode of auditing and passing accounts, that it is needless to do more than set out so much thereof as bears immediately upon the subject now under consideration.

“ ‘Whereas the appointment of Sheriffs, and the audit and passing of their accounts in the Court of Exchequer, are attended with unnecessary expense, delay, and trouble;’ for remedy whereof be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of an act passed in the third year of the reign of his Majesty King George the First, intituled, *An Act for the better regulating the Office of Sheriffs, and for ascertaining their Fees, and the Fees for suing out their Patents and passing their Accounts*, as entitles and authorises certain officers therein and in the schedule thereto mentioned to demand, take, and receive the fees named in the said schedule, and also the said schedule, and also an act passed in the said third year of the reign of his Majesty King George the First, intituled, *An Act for better enabling Sheriffs to sue out their Patents and pass their Accounts*, be and the same are hereby repealed.

Repeal of
part of 3
Geo. 1, c.
15, and of
3 Geo. 1,
c. 16.

“ 2. And be it further enacted, that from and after the passing of this Act it shall not be necessary for any Sheriff or Sheriffs of any county, city, or town in England or Wales to sue out any patent or writ of assistance, or to make or pay proffers, nor shall any bailiff or bailiffs of liberties in England or Wales be required to make or pay any proffers, nor shall he or they have any day of prefixion, or be apposed, or take any oath or

Sheriffs not
to sue out
patent or
pass ac-
counts in
Exchequer.

oaths before the cursitor baron to account, or account, or be cast out of Court, as now or heretofore in use in his Majesty's Court of Exchequer; any law, statute, or usage to the contrary notwithstanding."

Sheriff's accounts to be audited by commissioners for auditing public accounts.

25 Geo. 3, c. 52.

46 Geo. 3, c. 141.

1 & 2 Geo. 4, c. 121.

"8. And be it further enacted, that the accounts of the present and future Sheriffs of counties, cities, and towns within England, (except the counties palatine of Chester, Lancaster, and Durham,) shall from and after the passing of this Act be examined and audited by the commissioners appointed or to be appointed for auditing public accounts under and by virtue of the three several acts herein-after next mentioned; (that is to say,) an act passed in the twenty-fifth year of the reign of his late Majesty King George the Third, intituled *An Act for better examining and auditing the Public Accounts of this Kingdom*; an act passed in the forty-sixth year of the reign of his said late Majesty King George the Third, intituled *An Act for making more effectual Provision for the more speedy and regular Examination and Audit of the Public Accounts of this Kingdom*; and an act passed in the first and second years of the reign of his late Majesty King George the Fourth, intituled *An Act to alter and abolish certain Forms of Proceedings in the Exchequer and Audit Office relative to Public Accountants, and for making further Provisions for the Purpose of facilitating and expediting the passing of Public Accounts in Great Britain*; and to render perpetual and amend an Act passed in the fifty-fourth Year of his late Majesty, for the effectual Examination of the Accounts of certain Colonial Revenues; and all the powers and provisions now in force of the same acts shall extend and be applicable to the examination, audit, and discharge of the accounts of such Sheriffs by the said commissioners (so far as those powers and provisions are applicable thereto, and are not varied by this Act).

Sheriffs going out of office (except those of Chester, Lancaster, and Durham,) to transmit accounts to commissioners.

"9. And be it further enacted, that every person and persons who now are or who hereafter shall be Sheriff or Sheriffs of any county, city, or town within England, (except the said counties palatine of Chester, Lancaster, and Durham,) shall within two calendar months next after the expiration of his or their office, or in case of the death of any Sheriff or Sheriffs the Under-sheriff by him or them appointed shall within two calendar months next after the death of such Sheriff or Sheriffs, transmit to the said commissioners for auditing public accounts a just and true account, under his or their hand or hands, of all sums received by such Sheriff or Sheriffs to or for the use of his Majesty, and of all sums paid or claimed by him or them, or on his or their behalf (save such sums as are or have been usually inserted and allowed in the bill of cravings), with all such particulars as shall be needful to explain the same: Provided always, that such Under-sheriff shall not be personally responsible for any sum or sums received by such deceased Sheriff, but that the same shall be answered by the representatives of the said deceased Sheriff, or otherwise in due course of law: Provided always, that the Sheriff of Westmoreland shall yearly, within two calendar months next after the first day of January in every year, transmit or cause to be transmitted to the said commissioners for auditing the public accounts a like account under his hand, or the hand of his Under-sheriff, of all sums paid by him to or for the use of his Majesty within or during the year of our Lord next preceding, and of all sums paid or claimed by him or on his behalf during the same period (save such sums as are or have been usually inserted in the bill of cravings), with all such particulars as shall be needful to explain the same.

Sheriff of Westmoreland to transmit like accounts yearly.

" 10. And be it further enacted, that in case it shall be necessary for any such Sheriff or Sheriffs, or his or their Under-sheriff, to make oath or affidavit to any such account, or any article, matter, or thing relating thereto, such oath or affidavit, except when the said commissioners shall require his or their personal examination before them, shall and may be sworn before any of the judges of his Majesty's superior courts of record at Westminster, or before any commissioner for taking affidavits in any of the same Courts, or before any master or master extraordinary in the High Court of Chancery, or before any of his Majesty's justices of the peace.

The oath or affidavit of Sheriff may be taken before a judge, commissioner, or magistrate.

" 11. And be it further enacted, that the claim of every Sheriff or Sheriffs for certain allowances usually called the bill of cravings shall, from and after the passing of this Act, be preferred to the lord high treasurer or the commissioners of his Majesty's treasury for the time being, who, or any three or more of whom, shall and may grant a warrant for the allowance of the same in the account of such Sheriff or Sheriffs, or for the payment of such sum or sums of money in respect thereof as they shall think reasonable in that behalf.

Bill of cravings to be settled by the treasury.

" 12. And whereas the present mode of managing and collecting certain quit rents and vicecomital or viscontiel rents due to his Majesty, and the present mode of accounting for and paying post-fines on alienation of lands and other hereditaments, have been found disadvantageous to the public service, and inconvenient and troublesome to Sheriffs; for remedy whereof be it enacted, that from and after the tenth day of October next no Sheriff or Sheriffs shall receive or shall be chargeable with the collection and receipt of quit rents, vicecomital or viscontiel rents, and other rates and payments issuing out of or payable to his Majesty in respect of any honors, manors, lands, tenements, or hereditaments in England or Wales, but the same (except such as shall be released pursuant to the provision next hereinafter contained) shall hereafter be considered as part and parcel of the land revenue of the crown, and shall be under the care, management, and direction of his Majesty's commissioners of woods, forests, and land revenue, who shall have and exercise the same powers and authorities for collecting and enforcing the payment thereof as are given to or vested in them for collecting and enforcing payment of any other part of his Majesty's land revenue by any act or acts now in force concerning the same.

Quit rents, &c. to be received by commissioners of woods, forests, and land revenues.

" 13. And whereas many of the said rents are very ancient, and have become obsolete, and it is not known out of or from what hereditaments and premises the same are issuing and payable, so that payment thereof cannot be enforced; be it therefore enacted, that it shall be lawful for the lord high treasurer or the commissioners of his Majesty's treasury, and he and they

Power to treasury to release certain rents.

are hereby empowered, by warrant under his or their hands, to remit, release, and discharge all or any of the same rents, and the arrears thereof, or any part thereof.

Certain
parts of 32
Geo. 2, c.
14, re-
pealed.

“ 14. And be it further enacted, that so much of an act passed in the thirty-second year of the reign of his Majesty King George the Second, intituled *An Act for the more regular and easy collecting, accounting for, and paying of post-fines, which shall be due to the crown, and for the ease of Sheriffs in respect of the same*, as requires the receiver of pre-fines at the Alienation Office to become bound by recognizance to pay, or to pay to any Sheriff on producing his quietus, the sum total of the post-fines mentioned in such quietus, and as requires such receiver to become in like manner bound to pay, or to pay unto all and every the lords of liberties, proprietors and grantees of post-fines under the crown, or to their lawful bailiffs or attorney, on producing the respective schedules of the foreign apposer or clerk of the estreats of the Court of Exchequer, the sums of money in such schedules contained, be and the same is hereby repealed.

Sheriffs not
to be
chargeable
with pre-
fines or post-
fines.

“ 15. And be it further enacted, that no Sheriff or Sheriffs of any county, city, or town within England and Wales shall from henceforth receive or be charged or chargeable with any fine or fines, usually called pre-fines and post-fines, payable on alienation of lands or other hereditaments, but the same fines shall be received by the said receiver general of alienation fines, who shall pay and apply the same to such person or persons, in such sums, and in such manner as the lord high treasurer or the commissioners of his Majesty's treasury shall, by warrant under his or their hands, order or direct, except as to any such fine or fines, sum or sums of money, as shall or may be ordered to be paid by any order of his Majesty's Court of Exchequer in pursuance of the provision hereinafter contained.

Not to ex-
tend to the
county pa-
latine of
Lancaster.

“ 16. Provided always, and be it further enacted, that nothing herein contained shall extend to the pre-fines and post-fines arising within the county palatine of Lancaster, which last-mentioned pre-fines and post-fines shall be received and accounted for in like manner as hath heretofore been accustomed.

Receiver
general to
keep books
with liberty
of inspec-
tion to per-
sons en-
titled
to fines.

“ 17. And be it further enacted, that for the better information of all persons interested in or who may claim title to the fines last before mentioned, or any of them, the receiver general of alienation fines shall provide and keep books, in which he shall, in the English language, in a common and legible hand

and character, and as to sums and dates in words at length, enter and keep a true and full account of every pre and post-fine received by him, and in what town, parish, or place the premises are situate in respect of which the same fine or fines shall have been paid or received; all which books shall at all reasonable times be open to the inspection and examination of all and every body corporate or politic, person and persons, claiming to be entitled to or interested in the same fines or any of them, and his and their bailiff or bailiffs, agent or agents.

“ 18. And be it further enacted, that it shall be lawful for the lord high treasurer or any three of the commissioners of his Majesty's treasury, by warrant under his or their hand, from time to time to order and direct the said receiver general to pay such of the same fines, or any of them, or any part thereof, to any body politic or corporate, person or persons, entitled to the same, or to his, her, or their bailiff or bailiffs, agent or agents: provided always, that notwithstanding such payment, any body politic or corporate, person or persons aggrieved thereby, shall and may apply by petition in the manner hereinafter mentioned against the party or parties to whom such payment shall have been made, to restore or refund the sums by him or them so received.

Treasury may order payment to parties entitled.

“ 19. Provided always, and be it further enacted, that in case the commissioners of his Majesty's treasury shall neglect, refuse or decline to order the payment of any fine or fines received by the receiver general of alienation fines which shall be claimed by any body corporate or politic, person or persons, or if any party shall be aggrieved by any order for payment made by the said commissioners, it shall be lawful for any such body corporate or politic, person or persons, to apply by petition, in a summary manner, to the lord chief baron and the other barons of his Majesty's Court of Exchequer, setting forth the nature of the claim or title of the petitioner or petitioners; and thereupon the said barons of his Majesty's Court of Exchequer shall and they are hereby authorised to proceed to call the proper parties before them, and to hear and determine the matter of the said petition, and to give such costs and to make such order or orders therein as they shall consider just; and in case payment be thereby ordered of any sum or sums of money in respect of such fines, or any of them, by the said receiver general of alienation

On refusal of treasury, appeal may be made to the Court of Exchequer by petition.

finer, he is hereby authorised and required to pay the same according to such order or orders.

Accounts of receiver general to be audited by commissioners for auditing public accounts.

“ 20. And be it further enacted, that from and after the passing of this act the accounts of the said receiver general of alienation fines shall be audited and examined by the said commissioners appointed or to be appointed for auditing public accounts under and by virtue of the said herein-before recited acts passed in the twenty-fifth and forty-sixth years of the reign of his late Majesty King George the Third, and the said recited act, passed in the first and second years of the reign of his late Majesty King George the Fourth; and all the powers and provisions now in force of the same acts, so far as the same are applicable to such accounts of the said receiver general, and not varied by this act, shall extend and be applicable to the accounts of the said receiver general in the same manner and as fully and effectually as if the said receiver general had been named and included in the said last-mentioned acts as a public accountant.

Accounts when audited to be transmitted to lords of treasury.

“ 21. Provided always, and be it further enacted, that it shall not be necessary to declare the accounts by this act required to be audited by the commissioners of public accounts by or before the Chancellor of the Exchequer, but the said commissioners of audit shall transmit a statement of every account examined and audited by them under the authority of this act to the lord high treasurer or the commissioners of the treasury for the time being, who, having considered such statement, shall return the same to the commissioners of audit, together with his or their warrant, directing them to make up and pass the account, either conformably to the statement, or with such variations as he or they may deem just and reasonable; and the account having been made up pursuant to such directions, and signed by three or more of the said commissioners for auditing the public accounts, shall remain deposited in the Audit Office, and shall have the same force and validity, and be as efficient in law for all purposes whatsoever, as if the same had been declared according to the usual course by the Chancellor of the Exchequer; and the said commissioners shall thereupon, as soon as conveniently may be, cause such or the like certificate thereof, in the nature of a quietus, to be made out and delivered as is now practised by them with regard to declared accounts, and which shall be equally valid and effectual to discharge the accountants, and to all other intents and purposes.

" 22. And whereas an act was passed in the twenty-second and twenty-third years of the reign of his late Majesty King Charles the Second, intituled *An Act for the better and more certain Recovery of Fines and Forfeitures due to his Majesty*, and which act was made perpetual by an act made in the fourth and fifth years of the reign of their late Majesties King William and Queen Mary: And whereas it is expedient that further provision should be made for the speedy and regular return of fines, issues, amerciaments, penalties, forfeited recognizances, and deodands, in certain cases; be it therefore further enacted, that from and after the tenth day of October next so much of the aforesaid act passed in the twenty-second and twenty-third years of the reign of his late Majesty King Charles the Second as requires all fines, forfeitures, issues, amerciaments, forfeited recognizances, sum and sums of money paid in lieu and satisfaction of them or any of them, and all other forfeitures whatsoever, set, imposed, lost, or forfeited in his Majesty's Courts of King's Bench, Common Pleas, or Exchequer, or by or before any judge or judges of assize, clerk of the market, or commissioners of sewers, throughout the kingdom of England, to be certified and estreated into the Court of Exchequer twice in every year yearly, at the times thereby appointed, and also such part of the aforesaid act of their late Majesties King William and Queen Mary as makes perpetual the aforesaid provisions contained in the said act passed in the twenty-second and twenty-third years of the reign of King Charles the Second, shall be and are hereby repealed.

Part of stat.
22 & 23
Car.2, c.22,
requiring
fines, &c. to
be certified
and estreat-
ed into the
Exchequer
twice a year,
repealed.

" 23. And be it further enacted, that the clerk of the parliament shall, within fourteen days next after every session of parliament, make out an account of all and every fines or fine which shall or may be set or imposed, and also of all recognizances ordered to be estreated, by the lords spiritual and temporal in parliament assembled during such preceding session of parliament, with the names and residences of the parties, and distinguishing such of the said fines as shall have been received, and transmit the same to the lord high treasurer or to the commissioners of his Majesty's treasury, and also a duplicate thereof to the said commissioners for auditing the public accounts, and also shall, within the time aforesaid, certify and estreat all such fines as shall not have been received by him in and into his Majesty's Court of Exchequer.

Clerk of
parliament
to return to
treasury or
to commis-
sioners an
account of
fines set in
the House
of Lords;

and pay
fines re-
ceived as
treasury
shall direct.

“ 24. And be it further enacted, that all fines which shall be received by the said clerk of the parliament shall be paid by him to such person or persons, at such times, and in such manner as the lord high treasurer, or any three of the commissioners of his Majesty's treasury, shall by warrant direct.

Clerk of
House of
Commons to
make return
of all recog-
nizances.

“ 25. And be it further enacted, that the clerk of the House of Commons shall, within fourteen days next after every session of parliament, make out an account of all recognizances certified by the speaker of the said house or estreated by him into the exchequer, with the names and residences of the parties, and transmit the same to the lord high treasurer, or to the commissioners of his Majesty's treasury, and also a duplicate thereof to the said commissioners for auditing the public accounts.

Account of
fines in
King's
Bench,
Common
Pleas, and
Exchequer
to be trans-
mitted to
treasury
and to com-
missioners
of audit.

“ 26. And be it further enacted, that the King's coroner and attorney of his Majesty's Court of King's Bench, and the prothonotaries of his Majesty's Court of Common Pleas, and his Majesty's remembrancer of the Court of Exchequer, and also the masters and prothonotaries of the office of pleas in the same Court, respectively, shall on the first day of every term make out an account of all fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited to or for the use of his Majesty in the said Courts respectively, and not before estreated, with the names and residences of the parties, and distinguishing such as shall have been paid, and transmit the same to the commissioners of his Majesty's treasury, and also a duplicate thereof to the said commissioners for auditing the public accounts.

Unpaid
fines to be
estreated.

“ 27. And be it further enacted, that the said coroner and attorney of his Majesty's Court of King's Bench, the prothonotaries of the Court of Common Pleas, and the master and prothonotaries of the office of pleas, and King's remembrancer, respectively, shall on the first day of every term, and at such other time or times as they shall respectively be ordered or required so to do by any order of the said Courts respectively, or by the order of any judge or baron thereof, certify and estreat all such fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited as aforesaid, and not received by them respectively, in and into the said Court of Exchequer.

Fines, &c.
received to
be paid as
treasury
shall direct.

“ 28. And be it further enacted, that all such fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited as aforesaid, which shall be received by any of the said

officers of the said Courts of King's Bench, Common Pleas, or Exchequer, shall be paid by them respectively to such officer or officers or to such person or persons entitled thereto, and at such times and in such manner as the lord high treasurer or the commissioners of his Majesty's treasury shall by warrant under his or their hands direct.

" 29. And be it further enacted, that an account in writing of all fines, issues, amerciaments, penalties, and recognizances set, lost, imposed, or forfeited to or for the use of his Majesty by or before any judge or judges of assize, clerk of the market, or commissioners of sewers throughout the kingdom of England, and also all deodands found or forfeited to or for the use of his Majesty throughout the same kingdom, shall, within fourteen days next after any such fines, issues, amerciaments, penalties, recognizances, or deodands shall respectively be set, lost, imposed, forfeited, found, or accrue, be made out by the clerk of assize, clerk of the market, commissioners of sewers, and coroners, or other person or persons respectively to whom it doth appertain or belong to make estreat thereof, with the names and residences of the parties liable to make payment thereof respectively, and distinguishing such as shall have been paid or received; and two copies of such account when so made out shall be signed by the person or persons so required to make out the same, who shall, within the time last aforesaid, transmit one copy thereof to the commissioners of his Majesty's treasury, and another copy thereof to the commissioners for auditing the public accounts; and the same fines, issues, amerciaments, penalties, recognizances, and deodands shall also within the time last aforesaid be duly certified and estreated by such officers and persons respectively in and into the said Court of Exchequer; and all sum and sums of money which shall have been received for or on account of any such fines, issues, amerciaments, penalties, forfeitures, recognizances, or deodands shall be paid over by the parties respectively receiving the same unto the Sheriff or Sheriffs of the county, city, or town wherein the same shall have been set, lost, imposed, forfeited, found, or accrued, to the intent that such Sheriff or Sheriffs may be charged therewith, and duly account for the same.

Account of fines by clerks of assize, commissioners of sewers, clerks of the market, and of deodands, to be transmitted to treasury and to commissioners of audit.

" 30. Provided always, and be it enacted, that in all cases where any fines, issues, recognizances, penalties, forfeitures, or deodands are required by any act or acts now in force to be

Where fines, &c. are now estreated upon oath,

such oath
may be
taken before
a judge, &c.

estreated, upon oath, in or into the Court of Exchequer, such oath shall and may be sworn and taken before a judge of any of his Majesty's superior courts of record at Westminster, or before any commissioners for taking affidavits in the same Courts, or before any master extraordinary in the High Court of Chancery, or before any of his Majesty's justices of the peace; and every such estreat shall be transmitted to and filed with his Majesty's remembrancer of the said Court of Exchequer, and received and entered by him without fee or reward.

Accounts of
estreats to
be trans-
mitted to
treasury and
to commis-
sioners of
audit.

“ 31. And be it further enacted, that his Majesty's remembrancer do and shall, on or before the first seal day next after every term, make out an account in writing of all fines, issues, amerciaments, penalties, forfeited recognizances and deodands, estreated during the preceding vacation and term, and also of all returns within the same period of Sheriffs to process issued for the purpose of levying any estreated fines, issues, amerciaments, penalties, forfeited recognizances, and deodands, and shall, within the time last aforesaid, transmit and send one copy of such account to the commissioners of his Majesty's treasury, and another copy thereof to the said commissioners for auditing the public accounts.

Process to
be issued
every term,
or oftener,
to levy
estreats.

“ 32. And be it further enacted, that his Majesty's said remembrancer shall, on the first seal day next after every term, and also at any other time or times when required by the Court of Exchequer, or by the fiat or order of any baron thereof, make out and issue, or cause to be made out and issued, according to the practice of the Court of Exchequer, and without fee or reward, process for duly levying and enforcing payment of all such fines, issues, amerciaments, penalties, forfeited recognizances, and deodands estreated as aforesaid (except as hereinafter mentioned), which shall not theretofore have been levied, recovered, vacated, or discharged, and so from time to time until the same shall be fully paid or levied, vacated or discharged.

Power to
treasury to
stay process,
and dis-
charge the
fines, &c.

“ 33. And be it further enacted, that it shall be lawful for the lord high treasurer or the commissioners of his Majesty's treasury, and he or they are hereby authorised, by warrant under his or their hands directed to the proper officer or officers, to stay the issuing or execution of all or any process touching any of the matters set, lost, imposed, forfeited, or estreated as aforesaid, and to vacate and discharge such fines, issues, amerciaments, penalties, forfeited recognizances, or deodands, or any of them, or any part thereof; provided that nothing in this clause

contained shall extend to enable the said lord high treasurer or the commissioners of his Majesty's treasury to remit or restore any fine, issue, amerciaments, penalty, forfeited recognizance, or deodand to which any body corporate or politic, person or persons, shall or may be entitled, which shall have been actually levied by or paid to them.

" 34. And be it further enacted, that all bodies corporate and politic, and all and every other person and persons, having or claiming title to any fines, issues, amerciaments, penalties, forfeited recognizances, deodands, sum or sums of money contained in any account transmitted by virtue of this act to the commissioners for auditing public accounts, shall and may, by themselves, or their, his, or her bailiff, steward, or agent, at all seasonable times, have access to the said accounts, and take minutes or extracts therefrom.

Power to persons entitled to any fines, &c. to inspect accounts.

" 35. And be it further enacted, that it shall be lawful for the lord high treasurer, or any three or more of the commissioners of his Majesty's treasury, from time to time to order and direct payment, by warrant under his or their hand, of the said fines, issues, amerciaments, penalties, forfeited recognizances, deodands, sum and sums of money, or any of them, to any body corporate or politic, person or persons, entitled to the same, or to their, his or her bailiff, steward, or agent: Provided always, that notwithstanding such payment any body politic or corporate, person or persons, aggrieved thereby, shall and may apply by petition in the manner herein-after mentioned against the party or parties to whom such payment shall have been made, to restore or refund the sum or sums by him or them so received.

The treasury may order payment of fines, &c.

" 36. Provided always, and be it further enacted, that in case the commissioners of his Majesty's treasury shall neglect, refuse, or decline to order the payment of any fines, issues, amerciaments, penalties, forfeited recognizances, deodands, sum or sums of money so claimed as aforesaid, or if any party shall be aggrieved by any order made by the said commissioners, it shall be lawful for any such body or bodies corporate or politic, person or persons, to apply, in a summary way, by petition to the lord chief baron and the other barons of his Majesty's Court of Exchequer, setting forth the nature of the claim or title of the petitioners or petitioner; and thereupon the said barons of his Majesty's Court of Exchequer shall and they are hereby authorised to proceed to call the proper parties before them,

If treasury reject claims, the party may appeal to the Court of Exchequer.

and to hear and determine the matter of the said petition, and to give such costs and to make such order and orders therein as they shall deem just.

Act not to
prejudice
rights of
corporate
bodies, &c.

“ 37. Provided also, and be it further enacted, that nothing herein contained shall extend or be prejudicial to the rights, privileges, and remedies of any bodies politic or corporate, or of any lord of any manor, liberty, or franchise whatsoever, or of any person or persons claiming title under or by virtue of any grant from the crown; any thing herein contained to the contrary notwithstanding.

This Act not
to affect
jurisdiction
of Court of
Exchequer.

“ 38. Provided always, and be it further enacted, that nothing herein contained shall extend to prejudice or affect the power, jurisdiction, or authority of the lord chief baron and the other barons of his Majesty's Court of Exchequer as to the said fines, issues, amerciaments, penalties, forfeited recognizances, and estreats, or any process or proceedings thereon.

Act not to
affect rights
of county
palatines or
of city of
London.

“ 39. Provided always, and be it enacted, that nothing herein contained shall extend or be prejudicial to the rights, liberties, or privileges of the King's most excellent Majesty, his heirs and successors, in right of his duchy or county palatine of Lancaster or duchy of Cornwall, or the duke of Cornwall when there shall be a duke of Cornwall, or to the rights, liberties, or privileges of the prince bishop of Durham and the county palatine of Durham, or to the rights, customs, liberties, privileges, charter or charters of the city of London, but that the same rights and privileges shall be enjoyed and used as fully to all intents and purposes as before the passing of this Act.

Rights of
the city of
Chester
saved.

“ 40. Provided also, and be it further enacted, that nothing herein contained shall extend to or prejudice the rights, liberties, and privileges of the city and county of the city of Chester, but that the Sheriffs thereof shall and may account and obtain their quietus in like manner as hath heretofore been accustomed.

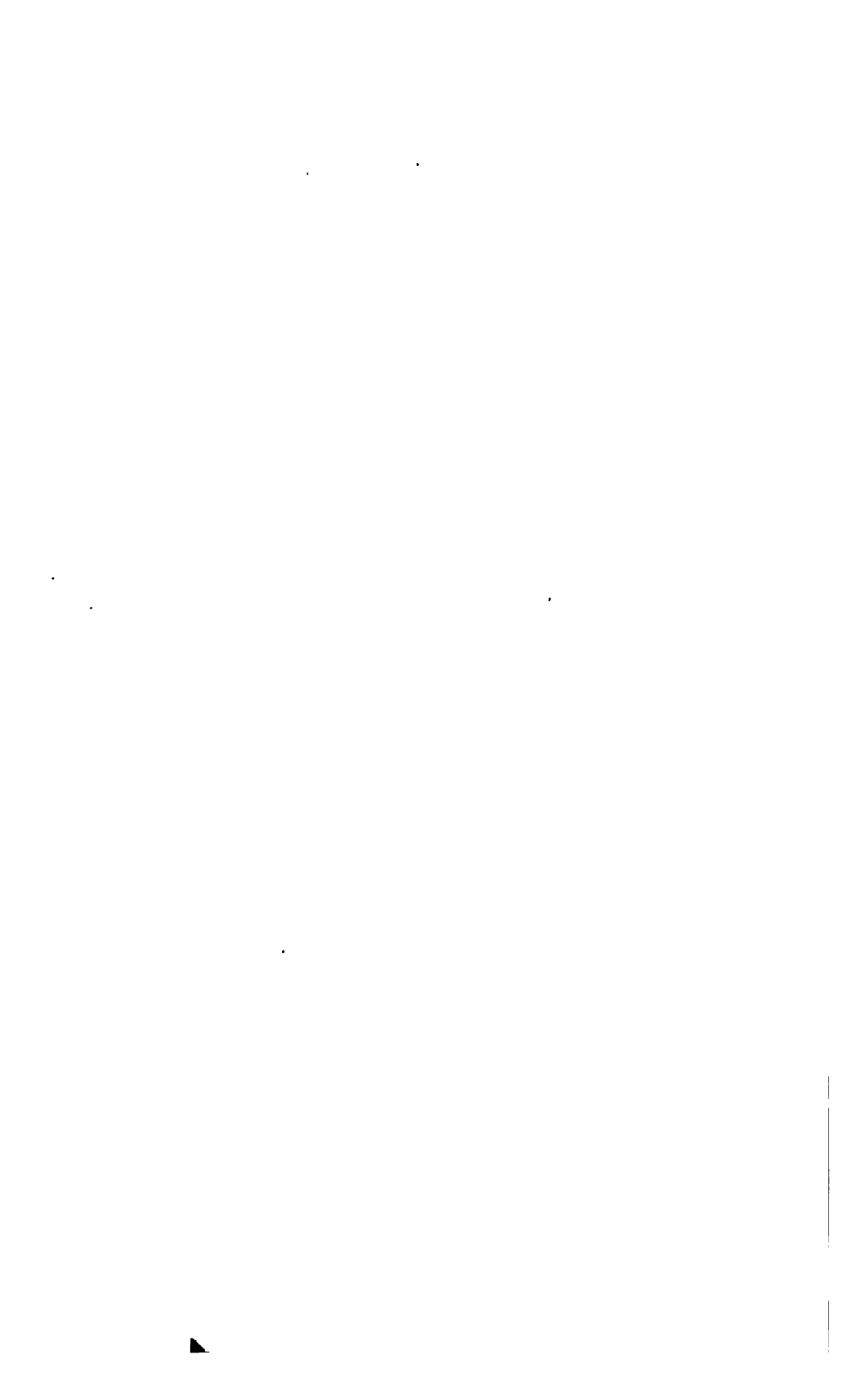
Lord trea-
surer's re-
mem-
brancer and
other offices
in Exche-
quer abo-
lished.

“ 41. ‘ And whereas many of the duties and much of the business of the lord treasurer's remembrancer and clerk of the pipe, and the offices connected therewith, in his Majesty's Court of Exchequer, have been transferred to other offices, or have ceased, or on the passing of this Act will cease; and other duties have become obsolete; and it is expedient that the said offices and other offices connected therewith should be abolished, and the duties thereof remaining hereafter to be performed be transferred to and performed by his Majesty's re-

membrancer of the said Court ;' be it therefore enacted, that from and after the tenth day of October next the several offices in his Majesty's Court of Exchequer hereafter mentioned ; namely, of lord treasurer's remembrancer, together with the filacer, secondaries, deputy remembrancer, and sworn and other clerks and bagbearer belonging thereto ; of clerk of the pipe, deputy clerk of the pipe, controller and deputy controller of the pipe, secondaries, attornies, or sworn and other clerks and bagbearer in the said office of the pipe ; of clerk of the estreats ; of surveyor of the green wax ; of the foreign apposer and deputy foreign apposer, and of clerk of the nichills, shall wholly cease and determine."

Affidavit of Truth of Account.

G. A. of M., Under-sheriff of the county of W., maketh oath and saith, that the account hereunto annexed is true in substance and in fact.
So help me God.



ADDENDA OF NEW WRITS.

[Under 1 & 2 Vict. c. 110.]

A REGRET will be found heretofore expressed that the judges had not exercised the power given them under 1 & 2 Vict. c. 110, to issue new writs of execution (a). Since the expression of that regret, however, and indeed since the whole of the work was printed, they have exercised their power and published the following forms—to be used from and after the first day of March next.

The writ of *elegit* is ably drawn, with a view of carrying the provisions of the Act into effect, and accords in substance with the precedent suggested, save the *interest* clause, which is new and valuable (b). As regards the *feri facias*, the profession, I think, will arrive at a very different conclusion; the draftsman of it clearly had an impression that *goods and chattels* only were leviable under it, otherwise he never would have used the terms “*goods and chattels*,” nominatim et singulatim governed by the words “cause to be *made*,” which are improper (c) as applicable to other things leviable under a fi. fa., namely, money, bank notes, cheques, bills, notes, &c. &c. How the words, “*and that you do all such things as by the statute passed in the second year of our reign, you are authorised and required to do in this behalf*,” can supply the defect, individually I am at a loss to know; as they stand, they refer not to the subject-matter leviable, but to the mode of executing the writ as required by the writ and indorsement, &c.

The course to be pursued, however, is clear. Until after the first of March next the execution creditor should sue out his *elegit* or *feri facias* in the form suggested; and the Sheriff must make his return as in the form suggested (d): after that period the Sheriff's return will be the same, naming *singulatim*, goods, chattels, money, bank notes, &c., for a return as general as the writ of *feri facias* might perhaps be holden void for uncertainty; the additional word *interest*, however, must not be forgotten in the return (e).

Writ of *elegit*.

Fieri facias.

Course to be pursued until and after the 1st of March, 1839.

Interest clause.

(a) *Ante*, p. 320.

(b) *Ante*, 321.

(c) *Ibid.*

(d) *Ante*, p. 331.

(e) *Post*, returns to *elegit* and fi. fa.

FORMS OF WRITS.

IT IS ORDERED, that the following forms of writs framed by the judges pursuant to the statute 1 & 2 Vict. c. 110, s. 20, *be used from and after the first day of March next*, with such alterations as the nature of the action, the description of the Court in which the action is depending, the character of the parties, or the circumstances of the case may render necessary, *but that any variance, not being in matter of substance (f), shall not affect the validity of the writs sued out.*

No. I.

Writ of elegit upon a judgment in the Court of Queen's Bench, in an action of assumpsit.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of _____, greeting. Whereas *A. B.*, lately in our Court before us at Westminster (*g*), by the judgment of the same Court, recovered against *C. D.* £ _____, which in our said Court before us were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, and afterwards the said *A. B.* came into our said Court before us, and according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the _____ day of _____, in the year of our Lord _____, on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said *C. D.* on the said day of _____¹, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to

¹ The day on which the judgment was entered up.

(f) This seems well calculated to ameliorate the practice at the judge's chambers.

(g) Neither the *elegit* nor the *fiari facias* contains the *non omittas* clause.

him and his assigns, according to the form of the said statutes, until the damages aforesaid, together with interest upon the said sum of £

at the rate of four pounds per centum per annum, from the day of , in the year of our Lord ¹, shall have been levied. Therefore

we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said day of ², or at any time afterwards, or over which the said *C. D.* on the said day of ³, or at any time afterwards had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, the day of , in the year of our Lord .

Return of Nihil (h).

The within named *C. D.* hath no goods or chattels, nor any lands, tenements, rectories, tithes, rents, or hereditaments in my bailiwick, whereof I can cause to be levied the debt, damages, and interest within mentioned, as within I am commanded.

G. A. Esq. High Sheriff.

Indorsement.

The execution of this writ appears in a certain schedule hereunto annexed.
The answer of *G. A. Esq. High Sheriff.*

(h) This return is *here introduced* to show how the returns embodied in the work itself are affected by the new writs. It will be observed that the

only alteration is in the additional word *interest*. On other returns, see *ante*, 339.

¹ The day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st of October, 1838, say from the 1st day of October in the year of our Lord 1338.

² The day on which the judgment was entered up.

No. II.

Writ of ele-
git on a rule
made in the
Court of
Queen's
Bench for
payment of
money.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of _____, greeting. Whereas lately in our Court before us at Westminster, by a rule of the said Court, entitled, &c. [*as the case may be*] the sum of £ _____, was by the said Court ordered to be paid by C. D. to A. B., and afterwards the said A. B. came into our said Court before us, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D. or any person in trust for him, was seised or possessed of on the _____ day of _____, in the year of our Lord _____, on which day the said rule was made, or any time afterwards, or over which the said C. D. on the said day of _____¹, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ _____, together with interest upon the said sum of £ _____, at the rate of four pounds per centum per annum, from the said _____ day of _____, in the year of our Lord _____², shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D. or any person in trust for him, was seised or possessed of on the said _____ day of _____³, or at any time afterwards, or over which the said C. D. on the said _____ day of _____³, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ _____, together with interest as aforesaid, shall have been levied, and in what manner you shall have executed this our writ, make appear to us at Westminster, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, the _____ day of _____, in the year of our Lord _____.

¹ The day on which the rule was made.

² The day on which the rule was made, or in case it was made prior to the 1st of October, 1838, say from the 1st day of October, in the year of our Lord 1838.

³ The day on which the rule was made.

No. III.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of , greeting. Whereas, lately in our Court before us at Westminster, by a rule of the said Court, entitled, &c. [*as the case may be*] the sum of £ was by the said Court ordered to be paid by C. D. to A. B., together with the costs of the said rule, which said costs were afterwards, on the day of , taxed and allowed by our said Court at the sum of £ . And afterwards the said A. B. came into our said Court before us, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any one in trust for him, was seised or possessed of on the day of in the year of our Lord ¹, or at any time afterwards, or over which the said C. D., on the said day of ¹, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest upon the said two several sums of £ and £ , at the rate of four pounds per centum per annum, from the said day of ², shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said A. B. by a reasonable price and extent, all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of on the said day of ³, or at any time afterwards, or over which the said C. D., on the said day of ³, or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ, make appear to us at Westminster immediately after the execution thereof, under your seal and the seals of

Writ of elegit on a rule made in the Court of Queen's Bench for payment of money and costs.

¹ The day on which the costs of the rule were taxed.

² The day on which the costs of the rule were taxed, or in case that day were prior to the 1st of October, 1838, say from the 1st day of October in the year of our Lord 1838.

³ The day on which the costs of the rule were taxed.

those by whose oath you shall make the said extent and appraisement, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, the day of ,
in the year of our Lord .

No. IV.

Writ of
elegit on a
judgment of
an inferior
Court in an
action of
assumpsit
removed
into the
Court of
Queen's
Bench.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of , greeting: Whereas *A. B.* lately in [*insert the style of the court*], by the judgment of the said court, recovered against *C. D.* the sum of £ , which, in the said court, were adjudged to the said *A. B.*, for his damages which he had sustained, as well on occasion of the not performing of certain promises and undertakings, then lately made by the said *C. D.* to the said *A. B.*, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record. And whereas the said judgment was afterwards, on the day of , in the year of our Lord , removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, [*or "of , one of the justices of our said court before us at Westminster," as the case may be,*] in pursuance of the statute in that case made and provided, and the costs attendant upon the application for the said order and upon the said removal were afterwards, on the day of , in the year of our Lord , taxed and allowed by our said Court, before us at Westminster, at the sum of £ . And afterwards the said *A. B.* came into our said Court before us at Westminster, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him, was seised or possessed of on the said day of , in the year of our Lord , aforesaid,¹ or at any time afterwards, or over which the said *C. D.*, on the said day of ¹, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid and the said costs so taxed and allowed by our said Court before us at Westminster as aforesaid, together with interest upon the said two several sums of £ and £ , at the rate of four pounds per

¹ The day on which the costs of removing the judgment were taxed.

centum per annum, from the day of aforesaid,¹ shall have been levied. Therefore we command you that, without delay, you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.*, in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the said day of ¹, or at any time afterwards, or over which the said *C. D.*, on the said day of ¹, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the damages aforesaid, and the said costs so taxed and allowed by our said Court before us at Westminster as aforesaid, and interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, the day of ,
in the year of our Lord .

No. V.

Victoria, &c. to the Sheriff of , greeting: whereas lately in [*insert the style of the Court,*] by a rule of the said Court entitled, &c. [*as the case may be,*] the sum of £ were by the said Court ordered to be paid by *C. D.* to *A. B.*, and whereas the said rule was afterwards, on the day of , in the year of our Lord , removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, [*or "of , one of the justices of our said Court before us at Westminster," as the case may be,*] in pursuance of the statute in that case made and provided, and the costs attendant upon the application for the said last-mentioned order and upon the said removal, were afterwards, on the day of , in the year of our Lord , taxed and allowed in our said Court before us at Westminster, at the sum of £ , and afterwards the said *A. B.* came into our said Court before us at Westminster, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and

¹ The day on which the costs of removing the judgment were taxed.

Writ of elegit on an order for payment of money made in an inferior Court and removed into the Court of Queen's Bench.

¹ The day on which the costs of removing the rule of the inferior Court into the Court of Queen's Bench were taxed.

hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person in trust for him, was seised or possessed of on the said day of ¹, in the year of our Lord , or at any time afterwards, or over which the said *C. D.* on the said day of ¹, or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest on the said two several sums of £ and £ , at the rate of four pounds per centum per annum, from the said day of ¹, shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the said day of ¹, or at any time afterwards, or over which the said *C. D.* on the day of ¹, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums of £ and £ , together with interest as aforesaid, shall have been levied, and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have you there then this writ.

Witness, Thomas Lord Denman, at Westminster, the day of , in the year of our Lord .

No. VI.

Writ of elegit on a rule for payment of money and costs, made in an inferior Court and re-

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of , greeting : Whereas lately in [*insert the style of the Court.*] by a rule of the said Court, entitled, &c. [*as the case may be.*] the sum of £ , was by the said Court ordered to be paid by *C. D.* to *A. B.* together with the costs of the said rule, which said costs were afterwards, on the day of , in the year of our Lord , taxed and allowed by the said

Court at the sum of £ , and whereas the said rule was afterwards, on the day of , in the year of our Lord , removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, [or " of , one of the justices of our said Court before us at Westminster, *as the case may be,*] in pursuance of the statute in that case made and provided, and the costs and charges attendant upon the application for the said last-mentioned order, and upon the said removal, were afterwards on the day of , in the year of our Lord , taxed and allowed in our said Court before us at the sum of £ , and afterwards the said *A. B.* came into our said Court before us at Westminster, and according to the form of the statute in such case made and provided chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.*, or any person in trust for him, was seised or possessed of on the said day of ¹, or at any time afterwards, or over which the said *C. D.* on the said day of ¹, or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said three several sums of £ and £ , and £ , together with interest upon the said three several sums of £ , £ and £ , at the rate of four pounds per centum per annum, from the said day of ¹, shall have been levied. Therefore we command you, that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.* or any person in trust for him was seised or possessed of, on the said day of ¹, or at any time afterwards, or over which the said *C. D.* on the said day of ¹, or at any time afterwards had any disposing power, which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.*, as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the three several sums of £ , and £ and £ , together with interest as aforesaid, shall have been levied, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof,

moved into
Queen's
Bench.

¹ The day
on which
the costs of
removing
the rule of
the inferior
Court into
the Court of
Queen's
Bench were
taxed.

under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, the day of ,
in the year of our Lord .

No. VII.

Writ of fieri facias on a judgment in the Court of Q. B., in an action of assumpsit.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of greeting. (a) We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £ , which A. B. lately in our Court before us at Westminster recovered against him for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings, then lately made by the said C. D. to the said A. B. as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record, together with interest upon the said sum of £ , at the rate of four pounds per centum per annum, from the day of , in the year of our Lord , on which day the judgment aforesaid was entered up, and have that money with such interest as aforesaid, before us at Westminster, immediately after the execution thereof, to be rendered to the said A. B. for his damages and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the day of , in the year of our Lord .

¹ The day on which the judgment was entered up, or if entered up prior to the 1st of October 1838, say from the 1st day of October in the year of our Lord 1838, omitting the words on which day the judgment aforesaid was entered up.

Return of Nulla Bona (b).

The within named C. D. hath no goods, chattels, money, bank-notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money in my bailiwick, whereof I can cause to be levied the debt, damages, and interest within mentioned, or any part thereof.

The answer of G. A., Esq. High-Sheriff.

(a) Neither the *feri facias* nor the *elegit* contains the *non omittas* clause.

(b) This return is introduced for the same object as the one *ante*, p. 441.

Indorsement.

The execution of this writ appears in a certain schedule hereunto annexed.

The answer of G. A., Esq., High-sheriff

No. VIII.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of ,
greeting. We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £ , which lately in our Court before us at Westminster, by a rule of our said Court entitled, &c. [*as the case may be*] were by the said Court ordered to be paid by the said C. D. to A. B. and that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be made interest upon the said sum of £ , at the rate of four pounds per centum per annum from the day of ¹, in the year of our Lord , on which day the said rule was made, and have that money, together with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said A. B. for the said sum of money so ordered to be paid by the said C. D. to the said A. B. and for interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, and have there then this writ.

Writ of fieri facias on an order of the Court of Q. B. for payment of money.

¹ The day on which the rule was made, or if it were made prior to the 1st of October, 1838, say from the 1st day of October in the year of our Lord 1838, omitting the words on which day the said rule was made.

Witness, Thomas Lord Denman, at Westminster, on the day
of , in the year of our Lord .

No. IX.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of ,
greeting. We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made £ , which lately in our Court before us at Westminster, by a rule of our said Court entitled, &c. [*as the case may be*] were by the said Court ordered to be paid by the said C. D. to A. B., together with the costs of the said rule, which said costs were afterwards, on the day of , in the year of our Lord , taxed and allowed by our said Court at the sum of £ , and that of the said goods and chattels of the said C. D. in your bailiwick you further

Writ of fieri facias on an order of the Court of Queen's Bench for payment of money and costs.

cause to be made interest upon the said two several sums of £ , and £ , at the rate of four pounds per centum per annum, from the said day of ¹, in the year of our Lord , and have that money, together with such interest as aforesaid, before us at Westminster immediately after the execution hereof, to be rendered to the said A. B. for the said sum of money so ordered to be paid by the said C. D. to the said A. B., and for costs and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster, immediately after the execution thereof, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the day of , in the year of our Lord .

¹ The day on which the costs of the rule were taxed, or if that were prior to the 1st of October, 1838, say from the 1st day of October in the year of our Lord 1838.

No. X.

Writ of fieri facias on a judgment of an inferior Court in an action of assumpsit, removed into the Court of Queen's Bench.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Sheriff of , greeting. We command you, that of the goods and chattels of C. D., in your bailiwick, you cause to be made £ , which A. B. lately in [insert the style of the Court] by the judgment of the said Court, recovered against the said C. D. for his damages, which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said C. D. to the said A. B. as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record, and which judgment was afterwards, on the day of , in the year of our Lord , removed into our Court before us at Westminster, by virtue of an order of our said Court before us at Westminster, [or "of , one of the justices of our said Court before us at Westminster," as the case may be], in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said order, and upon the said removal, were, on the day of , in the year of our Lord , taxed and allowed by our said Court before us at Westminster at the sum of £ . And we further com-

¹ The costs attendant upon the removal of the judgment out of the inferior Court into the Court of Queen's Bench.

² The day on which the costs of removal were taxed.

mand you, that of the said goods and chattels of the said C. D. in your bailiwick, you further cause to be made the said sum of £ ¹, together with interest on the said two several sums of £ and £ , at the rate of four pounds per centum per annum, from the said day of ², in the year of our Lord ; and that you have that money, with such interest as aforesaid, before us at Westminster, immediately after the execution hereof, to be rendered to the said A. B. for his damages aforesaid, and for costs and interests as aforesaid; and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf.

Witness, Thomas Lord Denman, at Westminster, on the day of
 , in the year of our Lord .

Witness, Thomas Lord Denman, at Westminster, on the day
of , in the year of our Lord .

2 The day on which the costs of removing the rule of the inferior Court into the Court of Queen's Bench were taxed.

Writ of fieri
facias on an
order for

payment of money and costs made in an inferior Court and removed into the Court of Queen's Bench.

ing. We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made £ , which lately in [*insert the style of the Court*], by a rule of the said Court entitled, &c. [*as the case may be,*] were by the said Court ordered to be paid by the said *C. D.* to *A. B.*, and also £ for the costs of the said rule by the said Court also ordered to be paid by the said *C. D.* to the said *A. B.*, which said rule was afterwards, on the day of , in the year of our Lord

, removed into our Court before us at Westminster, by an order of our said Court before us at Westminster, [*or "of , one of the justices of our said Court before us at Westminster," as the case may be,*] in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal were, on the day of , in the year of our Lord , taxed and allowed by our said Court before us at Westminster at the sum of £ , and we further command you that of the said goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of £ ¹, together with the interest on the said three several sums of £ , and £ , and £ , at the rate of four pounds per centum per annum, from the said day of , in the year of our Lord ², and that you have that money, with such interest as aforesaid, before us at Westminster immediately after the execution hereof, to be rendered to the said *A. B.* for the monies by the said rule first above mentioned ordered to be paid by the said *C. D.* to the said *A. B.*, and for costs and interest as aforesaid, and that you do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf, and in what manner you shall have executed this our writ make appear to us at Westminster immediately after the execution thereof, and have there then this writ.

Witness, Thomas Lord Denman, at Westminster, on the day of , in the year of our Lord .

DENMAN,	E. H. ALDERSON,
N. C. TINDAL,	J. PATTESON,
ABINGER,	J. GURNEY,
J. LITTLEDALE,	J. WILLIAMS,
J. VAUGHAN,	J. T. COLERIDGE,
J. PARKE,	T. COLTMAN,
J. B. BOSANQUET,	T. ERSKINE.

⁴ The costs of removing the rule from the inferior Court into the Court of Queen's Bench.

² The day on which the costs of removing the rule from the inferior Court into the Court of Queen's Bench were taxed.

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